

CRIMINAL ALIENS IN THE UNITED STATES

Y 4. G 74/9: S. HRG. 103-493

Criminal Aliens in the United State...

HEARINGS BEFORE THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE ONE HUNDRED THIRD CONGRESS FIRST SESSION

NOVEMBER 10 AND 16, 1993

Printed for the use of the Committee on Governmental Affairs

RECEIVED IN THE LIBRARY OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

JUN 28 1994



LIBRARY OF THE UNITED STATES SENATE

U.S. GOVERNMENT PRINTING OFFICE

74-148 ot

WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-044148-X

CRIMINAL ALIENS IN THE UNITED STATES

Y 4. G 74/9: S. HRG. 103-493

Criminal Aliens in the United States...

HEARINGS

BEFORE THE
PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

NOVEMBER 10 AND 16, 1993

Printed for the use of the Committee on Governmental Affairs

REPRINTED BY DOCUMENTS
DEPARTMENT



JUN 28 1994

U.S. PUBLIC LIBRARY
CITY OF WASHINGTON D.C.

U.S. GOVERNMENT PRINTING OFFICE

74-148-06

WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-044148-X

COMMITTEE ON GOVERNMENTAL AFFAIRS

JOHN GLENN, Ohio, *Chairman*

SAM NUNN, Georgia

CARL LEVIN, Michigan

JIM SASSER, Tennessee

DAVID PRYOR, Arkansas

JOSEPH I. LIEBERMAN, Connecticut

DANIEL K. AKAKA, Hawaii

BYRON L. DORGAN, North Dakota

WILLIAM V. ROTH, Jr., Delaware

TED STEVENS, Alaska

WILLIAM S. COHEN, Maine

THAD COCHRAN, Mississippi

JOHN McCAIN, Arizona

ROBERT F. BENNETT, Utah

Leonard Weiss, *Staff Director*

Franklin G. Polk, *Minority Staff Director and Chief Counsel*

Michal Sue Prosser, *Chief Clerk*

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

SAM NUNN, Georgia, *Chairman*

JOHN GLENN, Ohio, *Vice Chairman*

CARL LEVIN, Michigan

JIM SASSER, Tennessee

DAVID PRYOR, Arkansas

JOSEPH I. LIEBERMAN, Connecticut

BYRON L. DORGAN, North Dakota

WILLIAM V. ROTH, Jr., Delaware

TED STEVENS, Alaska

WILLIAM S. COHEN, Maine

THAD COCHRAN, Mississippi

JOHN McCAIN, Arizona

Eleanore Hill, *Chief Counsel*

Daniel F. Rinzel, *Chief Counsel to the Minority*

Mary D. Robertson, *Chief Clerk*

CONTENTS

Opening statements:		Page
Senator Nunn		1
Senator Roth		2, 39
Senator Cohen		40

WITNESSES

WEDNESDAY, NOVEMBER 10, 1993

Wm. Leighton Lord, III, Staff Counsel to the Minority, Permanent Subcommittee on Investigations; accompanied by Stephen H. Levin, Staff Counsel to the Minority, Permanent Subcommittee on Investigations		4
Richard Wellington Simons, Criminal Alien		30
Donovan Ellis, Criminal Alien		31
Luis Umberto Verdugo, Criminal Alien		31

THURSDAY, NOVEMBER 16, 1993

Doris M. Meissner, Commissioner, Immigration and Naturalization Service; accompanied by John Shaw, Assistant Commissioner for Investigation and Gil Kleinknecht, Associate Commissioner for Enforcement		42
Judge Jere Armstrong, Assistant Chief Immigration Judge, Executive Office of Immigration Review; accompanied by Judge Thomas Fong, Immigration Judge, Los Angeles, CA		62

ALPHABETICAL LIST OF WITNESSES

Armstrong, Judge Jere:		62
Testimony		62
Prepared Statement		64
Ellis, Donovan:		
Testimony		31
Lord, Wm. Leighton II:		
Testimony		4
Meissner, Doris M.:		
Testimony		42
Prepared Statement		44
Simons, Richard Wellington:		
Testimony		30
Verdugo, Luis Umberto:		
Testimony		31

APPENDIX

Prepared statement of Senator Cohen		Page 71
---	--	------------

EXHIBITS

1. Chart prepared by the Permanent Subcommittee on Investigations (PSI) entitled, Combined Federal/State Alien Prisoners and Cost in 1990		73
2. Chart prepared by PSI entitled, Aliens in Bureau of Prisons Custody		74
3. Chart prepared by PSI entitled, Criminal Aliens: Deportation Process Simplified		75
4. Chart prepared by PSI entitled, Corrections: Estimated Deportable Criminal Aliens		76

5. Chart prepared by PSI entitled, Criminal Aliens Ordered Deported Since FY 89 who have not been removed	77
6. Chart prepared by PSI entitled, Undetained Aliens	78
7. Declaration of Jose Carmen Encarnacion (Spanish with English translation)	79
8. Statement for the Record of Manuel Salmeron Catalan.	83
9. FBI Identification records for Manuel Salmeron-Catalan, Oscar Jiron, Jose Delcarmen-Encarnacion, Rick Willington Simons, Donovan Ellis and Verdugo-Org. (SEALED)	*
10. Alien Files for Manuel Salmeron-Catalan, Donovan Ellis, Rick Willington Simons, Jose Luis Ayala, Jose Delcarmen-Encarnacion and Verdugo-Org (SEALED)	*
11. Chart prepared by the Immigration and Naturalization Service (INS), entitled, Parties and Steps Involved in Deportation Procedures, Institutional Hearing Program.	84
12. Chart prepared by INS, entitled, Parties and Steps Involved in Deportation Procedures	85
13. Ordinances, resolutions, orders and legislation regarding local non-cooperation with the INS:	
a. San Francisco (1989 Ordinance, amended 1993);	*
b. Oakland (1986 Resolution);	*
c. Sacramento (1985 Resolution);	*
d. Los Angeles (1987 LAPD Manual);	*
e. Chicago (1989 Executive Order, policy since 1984);	*
f. New York City (1989 Executive Order);	*
g. Chapter 88, Sec. 53069.75, California Government Code, October 4, 1993	*
14. Opinion of Daniel E. Lungren, Attorney General, California and Gregory L. Gonot, Deputy Attorney General, dated November 2, 1992 regarding whether a city may prohibit its officers and employees from cooperating in their official capacities	*
15. Memorandum to Mike Lempres, Special Assistant to the Attorney General from Raymond M. Momboise, dated July 26, 1989. (SEALED)	*
16. Letter to Wm. Leighton Lord from Jim Dorcy, FAIR, dated October 6, 1993, regarding criminal aliens. (SEALED)	*
17. Letter to Daniel F. Rinzel from Shieila Anthony, dated October 22, 1993, enclosing statistical information on cases received and completed by EOIR since 1988	*
18. Letter from Cois Byrd, Sheriff, Riverside County, CA., to Senator Roth, dated October 26, 1993, attaching a recap of homicide cases wherein the subject is either known or believed to have fled to Mexico	*
19. Fax from Jacqueline Oliver, INS, New York, to Peter Nacci, dated October 20, 1993, re: statistics on criminal aliens	*
20. Fax from INS New York dated November 2, 1993 regarding Criminal Aliens—JFK Operation	*
21. Letter from Margaret Taylor, DOJ, EOIR, to Peter Nacci, dated September 13, 1992, enclosing a report entitled, Overview of Criminal Alien Program	*
22. Ten Wanted Criminal Aliens, U.S. INS, March 1993	86
23. The Criminal Alien, March 1993, by California State Legislature, Joint Committee on Prisons, Construction and Operations, Sacramento, California	*
24. Immigration Act of 1990, Report on Criminal Aliens, dated April, 1992 by the INS	*
25. Criminal Aliens in the Los Angeles County Jail Population Final Report, November 1990, Ad Hoc Subcommittee on Criminal Aliens	*
26. Report entitled, "Criminal Aliens", Assessment and Response, Immigration and Naturalization Service, Investigations Division, FY 89	*
27. The Institutional Hearing Program (IHP) at R.J. Donovan, Prepared by INS (undated)	*
28. San Diego County Detention Facilities, Report #11, (undated)	*
29. Immigration related (re-entry after deportation) Prosecutorial Guidelines for U.S. Attorneys in California, New York, New Mexico and Texas with summary prepared by PSI. (SEALED)	*
30. Impact of Repeat Arrests of Deportable Criminal Aliens in Los Angeles County. Final Report, July 15, 1992, Ad Hoc Subcommittee on Criminal Aliens	*

31. Commerce News, September 23, 1993, "Census Bureau finds significant demographic differences among immigrant groups"	*
32. Printout of aliens convicted for reentry after deportation (from May 1, 1991 to October 7, 1993)	*
33. 1991 Statistical Yearbook of the INS. (Undated)	*
34. Statistics for non-U.S. Citizens incarcerated in Federal Bureau of Prisons facilities April 29, 1993 and related materials	*
35. Letter from Howard R. Young, Classification Administrator, to William Leighton Lord, dated September 21, 1993, with attachments regarding: Delaware Department of Correction, Bureau of Prisons, Information on Alien Prisoners and prisoners born outside the United States	*
36. MOU between FDC Oakdale, Louisiana, INS, BOP and other documents related to Federal Detention Center in Oakdale, Louisiana, including: Census/Quarters/County of birth for week of October 4, 1993; Criminal Alien Program, Projected Releases, October through November 1993 and January through March 1994; Number of INS Removes, Jamaican and Nigerian; Number of bail bonds, Jamaican and Nigerian; Numbers of inmates transferred to FCI Oakdale, Louisiana for the criminal alien program which remain there; Criminal Alien Program, arrival of participants by projected release date; Criminal Alien Program, aliens by country of birth; and Criminal alien program releases.....	*
37. Historical Corrections Statistics in the United States, 1850-1984. By Margaret Weiner Cahalan, Westat, Inc., U.S. Department of Justice, Bureau of Justice Statistics, December, 1986	*
38. U.S. Government Memorandum, Federal Bureau of Prison, from Ike Eichenlaub, Office of Research and Evaluation, to Peter Nacci, detailee to the Permanent Subcommittee on Investigations, regarding Non-U.S. Citizens in the Custody of BOP, dated October 21, 1993.	*
39. Detention and Deportation Program, Report prepared by the Immigration and Naturalization Service, dated August 19, 1993	*
40. Results, National Institute of Corrections Survey of State Corrections Departments, January 1992, NIC Information Center, Boulder Colorado	*
41. Institutional Hearing Program Cases in Los Angeles County Jail, March 14, 1994	*
42. Additional questions for the record, U.S. Senate Permanent Subcommittee on Investigations hearing on Criminal Aliens, sent to Judges Armstrong and Fong, with answers	*
43. Additional questions for the record, U.S. Senate Permanent Subcommittee on Investigations hearing on Criminal Aliens, sent to Doris M. Meissner, with answers	87
	94

* Retained in the files of the Subcommittee.

CRIMINAL ALIENS IN THE UNITED STATES

WEDNESDAY, NOVEMBER 10, 1993

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:04 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Sam Nunn, Chairman of the Subcommittee, presiding.

Present: Senators Nunn and Roth.

Staff Present: Eleanore J. Hill, Chief Counsel; Mary D. Robertson, Chief Clerk; Harold B. Lippman, Investigator; Cynthia Comstock, Executive Assistant to Chief Counsel; Daniel F. Rinzel, Minority Chief Counsel; Stephen H. Levin, Minority Counsel; W. Leighton Lord III, Minority Counsel; Sallie B. Cribbs, Minority Executive Assistant to Chief Counsel; Carla J. Martin, Minority Assistant Chief Clerk; Peter Nacci, (Detailee, Bureau of Prisons); Gene Richardson, Investigator (Detailee, AID); Paul Feeney (Senator McCain); Missy Edwards (Senator Cochran); and Sean Parkin (Senator Bennett).

OPENING STATEMENT OF SENATOR NUNN

Chairman NUNN. The Subcommittee will come to order. This morning, the Permanent Subcommittee on Investigations turns its attention to the area of immigration issues, and more specifically problems occurring in connection with one of the U.S. Immigration and Naturalization Service's more important but little known programs, the Alien Criminal Apprehensions Program.

Established in 1986, the Alien Criminal Apprehensions Program is supposed to identify, locate, and initiate removal proceedings against criminal aliens, ensure their expeditious removal, and act as an effective deterrent against aliens seeking entry into the U.S. to engage in criminal activity. For many Americans, as well as those of us here in Congress, immigration policy and illegal aliens have long been a matter of interest and concern. However, while there has been much debate on these two related issues, there has been surprisingly little attention focused on the subject of today's hearings, criminal aliens.

Simply put, criminal aliens are non-citizens who have committed crimes in our country. Criminal aliens, for example, are widely seen as having been and continuing to be a significant part of the Nation's drug problem. Problems involving criminal aliens also came to our attention in a vivid way in 1987 in the aftermath of the notorious Cuban Mariel boat lift.

Prompted by longstanding problems indicated in these incidents and the questions they pose regarding our Government's ability to deal effectively with criminal aliens, the Subcommittee's ranking minority member, Senator Bill Roth, initiated an investigation of the Alien Criminal Apprehensions Program this past June. Since that time, the minority staff have been examining INS' overall performance in administering this program, with special emphasis on three key areas: their efforts to identify and keep track of criminal aliens, the process by which they are found to be deportable, and the actions needed to effectuate their deportation.

The result of the minority's work in this regard is the focus of today's hearings and another scheduled hearing, I believe, next week, November 16th. In today's hearings, we will hear first from the minority staff who will summarize their findings to date and, in so doing, raise some significant questions about the INS' ability to effectively administer its criminal alien program responsibilities. Following them will be a panel of criminal aliens who will provide testimony about their experiences under this program.

Let me add at this point that we expect to hear from INS representatives in next week's hearings, at which time they will have an opportunity to present their views on this program's operations.

In closing, I want to commend Senator Roth and his staff for their fine work in preparing these hearings. They are indeed most timely, since they simultaneously touch on two major issues of public concern: the ever-increasing amount of crime in our country and the effectiveness, or lack thereof, of our Government's immigration policies and programs. Accordingly, Senator Roth, I look forward to the testimony to be presented by you and your staff on this important subject.

OPENING STATEMENT OF SENATOR ROTH

Thank you, Mr. Chairman. As you have pointed out, the Subcommittee begins hearings on a problem which lies at the cross-roads of two major areas of concern currently facing the American people and the Congress—crime and the effective control of our Nation's borders. Criminal aliens, the subject of these hearings, reside at the dangerous intersection of these two problems.

In 1992, this Subcommittee conducted an investigation of Asian organized crime. In that investigation we found that for some international Asian crime syndicates alien smuggling is often more profitable and far less risky than drug smuggling. These criminal organizations would charge each alien up to \$30,000, reaping huge profits. Yet, even if the smugglers were caught, they would typically face only 3 or 4 months in jail, hardly a deterrent to such profitable ventures.

In directing that investigation, I became aware that we had a growing problem with criminal aliens. However, I did not imagine the problems were as bad as we have found them to be. The roots of the problem are widespread with the need for change at all levels. For example, our Federal deportation laws for criminal aliens set out an irrational, lengthy, complex process far beyond what is due already convicted criminals.

In addition, the Immigration and Naturalization Service, the agency, of course, responsible for enforcing the immigration laws

and for deporting criminal aliens, is lacking the resources and the management priorities necessary to effectively deal with criminal aliens. Now, I am not only talking about staffing and training, but also ineffective use of the resources which are available. The INS computer system, for example, seems totally inadequate to the task. Finally, we have seen evidence of local governments refusing to cooperate with the Immigration Service, making an already difficult job that much harder.

The best way to understand the problems with the current process is to walk through it from beginning to end. Aliens who commit certain crimes, whether they are here legally or illegally, are subject to being deported to their home countries. Unfortunately, the Immigration Service is unable to even identify most of the criminal aliens who clog our State and local jails before these prisoners are released back onto our streets.

As we will hear today, even when the Immigration Service is able to identify these criminal aliens, the procedures that the INS is required to follow in order to deport someone are so lengthy and complex that these criminal aliens are often allowed to remain in the U.S. for years while they appeal their cases.

Many criminal aliens are released on bond by the INS while the deportation process is pending. It is not surprising that many skip bond and never show up for their hearing, especially in light of the fact that the Immigration Service makes little effort to locate them when they abscond.

Ironically, one thing that INS does do is routinely provide criminal aliens with work permits legally allowing them to get jobs while their appeals are pending. One INS deportation officer told my staff that he only spends about 5 percent of his time looking for criminal aliens who have absconded because he spends most of his time processing and renewing work permits for aliens with pending deportation proceedings.

According to the Immigration Service's own figures, in 1992 there were nearly 11,000 aliens convicted of aggravated felonies, the most serious crimes, who failed to show up for their deportation hearings. As for actual deportation, the final step in the process, even when final orders are issued for criminal aliens, they are often not actually deported.

Several years ago, for example, internal Immigration Service investigators found thousands of deportation orders gathering dust in boxes stored in the INS Los Angeles field office. No action had been taken to implement these orders. Some frustrated INS officials have told us that the only criminal aliens deported are those who want to be deported. They feel the system works that badly.

Finally, even in these instances when the system finally works and a criminal alien is deported, reentry into the United States is so easy that it makes the whole process appear to be a giant exercise in futility. We will hear today from several criminal aliens who have repeatedly been deported and then reentered this country. Although Congress has made reentry into the U.S. after being deported a felony punishable by up to 15 years in prison, Justice Department prosecutors do not make these cases a high priority and frequently fail to prosecute violators.

Obviously, not all aliens in the United States are criminals. In fact, most are hard-working and law-abiding. Indeed, most of us originally hail from immigrant stock. But when it comes to criminals, since we seem to have no problem producing them ourselves, we do not need to import them.

Let there be no doubt that there is much to be done at all levels. I believe Congress needs to simplify the laws so that criminal aliens are immediately deported to their home countries after serving their sentences and adopt tough penalties for immigration violations, while ensuring that those laws already on the books are enforced. Clearly, the INS and the Justice Department need to re-evaluate and revamp their whole approach to criminal aliens.

Finally, in the current debate regarding U.S. immigration laws, many States and local governments have been highly critical of what they see as the Federal Government's inability to effectively police our Nation's borders, resulting in a massive influx of criminal aliens. Yet, some of these same jurisdictions have passed laws and adopted official policies prohibiting their local police departments from cooperating with the INS. I think that is hypocritical, and I am pleased, Mr. Chairman, that the Senate yesterday adopted an amendment of mine that would address this problem.

Mr. Chairman, I want to thank you and your staff for their support and assistance during the course of the investigation. I look forward to working with you, as we have in the past, in developing solutions to this most complex problem.

Chairman NUNN. Thank you, Senator Roth. I am going to have to be in and out. I am still trying to wind up the odds and ends of the conference on DoD, and I have also got to be at two other hearings this morning. So I am going to turn it over to you and I will be in here as much as I can.

Senator ROTH [presiding]. Thank you, Mr. Chairman. I appreciate the complexity of your schedule.

At this time, I would like to call our first panel of witnesses, our minority staff counsels, Leighton Lord and Steve Levin, who will be presenting the staff findings of the Permanent Subcommittee on Investigations.

Gentlemen, would you please stand and raise your right hands? Do you swear that the testimony you will give before this Subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. LORD. I do.

Mr. LEVIN. I do.

TESTIMONY OF WM. LEIGHTON LORD III, STAFF COUNSEL TO THE MINORITY, PERMANENT SUBCOMMITTEE ON INVESTIGATIONS; ACCCOMPANIED BY STEPHEN H. LEVIN, STAFF COUNSEL TO THE MINORITY, PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. LORD. Thank you, Mr. Chairman and Senator Roth. At this time, we will present a summary of the staff's findings. The staff's findings are contained in greater detail in a staff statement that I request be included in the record in its entirety.¹

¹ The staff statement appears on page 12.

Senator ROTH. Without objection.

Mr. LORD. During the course of our investigation, we interviewed numerous Immigration and Naturalization Service officials; visited several INS district offices; interviewed State prison officials, local jail officials, local law enforcement, immigration judges, prosecutors, as well criminal aliens themselves.

Based on our investigation, we conclude that, at least in some parts of the United States, if you want to follow a life of crime, you are better off being an alien than a U.S. citizen. For example, in San Diego County, California, because of the lack of jail space, misdemeanor offenders such as shoplifters are not usually taken to jail for booking. Instead, a summons is issued requiring the alleged shoplifter's appearance in court at a later date. On the other hand, police frequently do not bother to issue a summons to a person identified as an illegal alien. They are often simply let go.

Aliens who commit minor felonies may have their cases dismissed in favor of their being turned over to INS custody. Even in the case of major felonies committed by aliens, the difficulties in obtaining accurate criminal histories for the aliens may result in their receiving a lesser sentence than they would have received if their true criminal histories were known.

Our investigation also led us to conclude that the current system for deporting criminal aliens is woefully inadequate. The INS is unable to identify most of the criminal aliens who are arrested, prosecuted and incarcerated in the United States before they are released from custody. Even when such criminal aliens are identified by the INS, the complexity of the current law governing deportation, as indicated by the chart to my right, is such that criminal aliens, if they desire, can delay their deportation for years.¹

In addition, at every step of the process there is leakage, since substantial numbers of aliens skip bond, do not appear for hearings or do not report for deportation once final orders of deportation are issued. As one frustrated INS agent told us, "We only deport the honest and the dumb."

One reason for pursuing the complex deportation process is because reentry after deportation is a felony punishable by up to 15 years imprisonment. Yet, deportation does not, as a practical matter, appear to serve as much of a deterrent to reentry. In fact, deportation is only a minor inconvenience to many criminal aliens who continue to return to this country after being deported 4 or 5 times. For criminal aliens, the U.S. is indeed a land of opportunity, a land where the criminal opportunities appear to far outweigh the potential punishments. The three criminal aliens who will testify later today have each been deported, only to return to the U.S. within weeks or days.

Criminal aliens are a large and growing threat to our public security and constitute a growing drain on scarce criminal justice resources. The growth of the criminal alien population is illustrated by the chart to my right. This chart shows the growth of the alien population in the Federal prison system.² Aliens now account for

¹The document referred to was marked Exhibit #12, and can be found on page 85.

²The document referred to was marked Exhibit #2, and can be found on page 74.

over 25 percent of the Federal prison population and represent one of the fastest growing segments of that same population.

The disturbing growth of the alien population in Federal prisons represents only a small part of the criminal alien population in this country. As the next chart illustrates, the number of criminal aliens who have been convicted of a crime and are in prisons, local jails or on probation or parole on any given day is approximately 450,000.¹ This is a conservative estimate which is based on a low-end projection of GAO and INS estimates of the percentage of aliens in the criminal population.

Moreover, it represents only a snapshot view of the problem. For example, the Los Angeles County jail, which houses over 20,000 prisoners on a given day, has a high turnover rate, such that more than 260,000 inmates pass through the jail in the course of a year, with average time served of 30 days. One study showed that 11 percent of Los Angeles County jail inmates were criminal aliens. That suggests that more than 28,000 criminal aliens are incarcerated in the Los Angeles County jail alone in the course of a year.

The cost of dealing with such a large number of criminal aliens is enormous. As the next chart indicates, the cost of housing criminal aliens in Federal and State prisons alone—and I should note this does not include criminal aliens in local jails or on probation or on parole—is over \$700 million a year.² The cost estimate also does not include other significant costs such as law enforcement and court proceedings.

Our investigation revealed numerous flaws in the governmental response to the criminal alien problem. I should also note that "governmental response" in this statement refers primarily to the response of the Immigration and Naturalization Service since the INS is the lead agency with regard to criminal aliens. However, other Federal, State, local, as well as foreign governmental entities play important roles with regard to criminal aliens. And, of course, Congress has created the complex and ineffective web of immigration laws that the INS is charged with enforcing.

Before outlining our findings it may be helpful if I provide a brief overview of the law regarding criminal aliens. The earliest U.S. immigration law, passed in the late 1800's, barred the entry of so-called undesirables, which included "convicts," but did not allow for the deportation of criminal aliens.

The 1917 Immigration Act provided the first grounds for the deportation of criminal aliens. The 1917 Act provided for the deportation of aliens who committed serious crimes within 5 years after entry. The Act also provided for the deportation, without limitation on the length of entry, for aliens who proved to be, "criminals of the confirmed type."

The current legal framework governing the deportation of criminal aliens was set out in the Immigration and Nationality Act passed in 1952. It may be summarized as follows. Any alien convicted of a crime of moral turpitude and sentenced to a year incarceration within 5 years after entry is deportable. In addition, any alien convicted of two or more crimes of moral turpitude any time

¹ The document referred to was marked Exhibit #4, and can be found on page 76.

² The document referred to was marked Exhibit #1, and can be found on page 73.

after entry and regardless of length of incarceration is deportable. Finally, any alien convicted of an aggravated felony, as defined by the Immigration and Nationality Act, at any time after entry is deportable.

As previously stated, we found serious problems with the INS criminal alien program. These problems were found at the initial identification stage, the final deportation stage, as well as the procedural stages in between. We also found the INS recordkeeping system to be so deficient that it is difficult to determine the true magnitude of the criminal alien problem.

For example, the INS was unable to answer fundamental questions such as how many detainees it currently has outstanding on criminal aliens in Federal and State prisons. The INS records system has long been legendary for its deficiencies. When former President Carter wanted to know how many Iranian students were in the U.S. on student visas during the Iran hostage crisis, no one was able to tell him. Not much has changed.

The INS file system is name-based, which often leads to confusion when aliens make use of multiple aliases, which they often do. A Los Angeles County study showed that criminal aliens average seven different aliases. One alien who will testify later today claims to have employed 26 aliases during his career as a criminal in this country.

The INS central computer system contains relatively little information and serves primarily as a means of locating the paper file, or "A-File," which is typically stored in the district where it was created. Since the INS has over 90 million immigration files, they are often misplaced. A standard joke among INS agents is that the computer system tells them where the file was last lost. Confusion over aliases and lost files often leads to the creation of multiple A-Files on the same alien, with each file containing only a part of the history of that particular alien.

These problems can be attributed to several factors. One factor certainly may be the limited resources available to the INS. There are over 7,600 prisons, jails, probation and parole offices in the United States which may incarcerate or supervise criminal aliens. Even if all 1,100 INS investigators devoted all their time to criminal alien issues, they would face a heavy workload.

Resources are not, however, the only factor. Inefficiencies in internal INS policies and practices contribute to the problem. For example, there appears to be little coordination between the Border Patrol, a unit of the INS which has substantial responsibility for handling criminal aliens in some INS districts, and INS criminal investigators in those same districts who also share responsibility for dealing with the same criminal aliens.

The first step necessary for dealing with the criminal alien problem is to identify them. The vast majority of criminal aliens identified by the INS are identified while serving a sentence in State or Federal prison. However, many criminal aliens in State prisons are never identified by INS. This is because determining alienage is not necessarily a simple matter. State correction and law enforcement officials are not trained to determine alienage and the mere fact that someone is foreign born does not mean that that person is an alien.

Similarly, some criminal aliens falsely claim U.S. birth and, therefore, U.S. citizenship. For example, one INS official told us that the INS observed an unusually large number of prisoners in some State prisons who claimed to have been born in the U.S. Virgin Islands or in Puerto Rico. Upon further investigation, many of these prisoners were determined to have been born in other non-U.S. territories in the Caribbean.

A second problem is that some State prisons and most county and local jails are not systematically monitored by the INS. In fact, some prisons and jails are not monitored at all. As previously mentioned, that task may be beyond INS resources when one remembers that there are 7,600 correctional facilities and offices and only 1,100 INS investigators to monitor them. The result is that many criminal aliens, especially those who spend little or no time in prison or jail, are likely to slip through the system without being identified by the INS.

Once a criminal alien has been identified and found to be potentially deportable, removal proceedings are initiated. The Immigration and Nationality Act requires that the INS initiate and complete, to the extent possible, deportation proceedings against aggravated felons before the aliens are released from incarceration for their underlying aggravated felony.

We found that the INS does not complete the deportation process for a large number of criminal aliens before completion of the criminal's underlying sentence. A 1992 GAO study found that in December of 1991 only 6 percent of criminal aliens had their deportation proceedings completed prior to their release date. The inability to complete the deportation process prior to the completion of the underlying sentence has several negative ramifications.

These ramifications stem from the fact that when the deportation process is not complete, the INS has to either detain the criminal alien or release the criminal alien on bond. The detention option is problematical. INS has limited detention space and apparently even more limited funds for detention. Release on bond, on the other hand, is even more of a problem since our investigation has found that large numbers of non-detained criminal aliens abscond and fail to appear for their deportation hearing.

Most INS districts have a chronic lack of detention space. For example, the Pennsylvania INS district, which includes Delaware and West Virginia, has only 15 beds. The lack of detention space puts pressure on the INS to release rather than detain criminal aliens, and this includes aggravated felons.

INS districts also have the option of sending criminal aliens that they wish to detain to central processing facilities such as the facility in Oakdale, Louisiana. Staff learned, however, that some districts are reluctant to use such facilities since doing so means giving up credit for a deportation of the criminal alien.

Criminal aliens who are released pending their deportation are very likely to never appear for their deportation proceeding, and this chart to my right indicates some of the statistics that we uncovered.¹ As of December of 1991, the INS reported that some 10,875 aliens convicted of aggravated felonies failed to report for

¹ The document referred to was marked Exhibit #6, and can be found on page 78.

their deportation proceedings. It is unclear what, if any, systematic efforts the INS takes to locate and apprehend those aliens who fail to appear for their deportation proceeding.

A related problem involves the absconding of criminal aliens who have been issued a final order of deportation. Under INS practice, undetained criminal aliens who have been ordered deported are given 72 hours to go home, pack their bags, and report for deportation. Staff was told that this notice is often referred to humorously within the INS as the "72 hours to run notice" since, as one would expect, criminal aliens who have been ordered deported often fail to appear for their actual deportation. In New York, for example, in fiscal year 1993, 1,486, or 87.7 percent, of the criminal and non-criminal aliens who were served notices of deportation failed to surrender.

It is unclear what effort the INS undertakes to capture absconded criminal aliens. What is clear is that the number of criminal aliens who have absconded prior to their deportation is growing. The chart to my right shows the number of criminal aliens ordered deported each year since fiscal year 1989 and the number of criminal aliens actually deported during each of these years. As the chart indicates, since 1989 a total of 18,641 criminal aliens have been ordered deported, but were not physically removed.¹ INS also reports that some 10,875 criminal aliens convicted of aggravated felonies are currently at large.

Another factor complicating the deportation process is the statutory exceptions that aliens facing deportation may seek to take advantage of. One such avenue of relief is under Section 212(c) of the Immigration and Nationality Act. Under this section, a criminal alien admitted for permanent residence can seek relief from deportation if the criminal alien has been in the U.S. for 7 years and has not served more than 5 years for an aggravated felony.

Some immigration judges include time spent in jail or prison when determining whether a 212(c) applicant has been in the U.S. for 7 years. In 1992, there were 1,015 section 212(c) applications by criminal aliens involved in the institutional hearing program, or 12 percent of the total number of hearings held. Other criminal aliens seek to avoid deportation by claiming political asylum. In 1992, 219 out of 8,273 criminal aliens who were admitted to the institutional hearing program claimed asylum during their deportation proceedings.

Our investigation also discovered that certain governmental entities outside of the INS contribute to the problems regarding criminal aliens. Mr. Levin will now outline the staff's findings with regard to local and foreign non-cooperation.

Thank you.

Mr. LEVIN. As with any criminal law enforcement issue, developing an effective governmental response to the criminal alien problem requires cooperation among Federal, State and local law enforcement agencies. Such cooperation, or the lack thereof, often determines whether a law enforcement operation succeeds or fails. While cooperation has always been important for successful law enforcement, in recent years both the Congress and the law enforce-

¹The document referred to was marked Exhibit #5, and can be found on page 77.

ment community have placed a high priority on developing programs encouraging the cooperation essential for law enforcement to achieve its mission.

Despite this general consensus on the need to foster cooperation among law enforcement agencies, we were surprised to find that over the last decade some local jurisdictions have enacted laws or policies that limit or prohibit local government employees' cooperation with the U.S. Immigration and Naturalization Service. These local laws are often referred to as "sanctuary," "refuge" or "non-cooperation" laws.

Surprisingly, these local laws or policies of non-cooperation have most frequently been adopted in some of the Nation's largest cities which, we all know, often have the most serious problems with illegal aliens. These provisions have been adopted by cities in all regions, including New York, Chicago and Los Angeles.

In California, which has about half of the illegal aliens in this country, most of the major cities have adopted some kind of policy limiting cooperation with the INS. In 1985, Sacramento, the state capital, adopted a resolution declaring Sacramento a "sanctuary city" and prohibiting city employees from "investigat[ing] or assist[ing] in the investigation of the citizenship or residency status of any person" unless specifically authorized by law. While the resolution makes particular mention of foreign nationals from Guatemala and El Salvador, the prohibition against cooperation is not limited to any particular foreign nationals.

Similarly, Oakland adopted a resolution prohibiting city officials "from assisting or cooperating" with the INS regarding "alleged violations of the civil provisions of the immigration laws." As with Sacramento, while the Oakland resolution refers to specific foreign nationals, in this case from El Salvador, Guatemala, Haiti and South Africa, the non-cooperation provision is not limited to individuals from those nations.

San Francisco adopted a broad-based ordinance in 1989 declaring San Francisco "a city and county of refuge," without referring to any particular foreign nationals. According to this ordinance, unless specifically required by law, no "city funds or resources" are to be used "to assist in the enforcement of Federal immigration law. . ." San Francisco's ordinance does include a general exception for persons booked for allegedly committing a felony.

While Los Angeles has not adopted non-cooperation legislation, the city's police department has a written policy that severely limits the circumstances under which Los Angeles police officers who come into contact with illegal aliens are permitted to notify the INS. In fact, the Los Angeles Police Department is currently being sued by several organizations that claim the LAPD has violated both court rulings and its own internal policy by cooperating too closely with the INS. According to the Los Angeles city attorney's office, the goal of the organizations bringing this lawsuit is to make Los Angeles a sanctuary city.

This issue of local jurisdictions adopting laws or policies of non-cooperation with the INS recently came before the California State Legislature, which passed a law limiting local non-cooperation laws. However, this law applies only to persons arrested and booked for allegedly committing a felony. As a result, the new law

still allows non-cooperation regarding large numbers of illegal aliens, such as those who may have been arrested or convicted of misdemeanors and those who are administrative violators.

These local non-cooperation laws and policies are not limited to California. A Chicago executive order issued April 25, 1989, continuing a policy that was adopted in 1985, prohibits city officials from investigating or assisting "in the investigation of the citizenship or residency status of any person unless such inquiry or investigation is required by statute, ordinance, Federal regulation or court decision." According to INS officials we have spoken to, in terms of street-level law enforcement in Chicago this has resulted in "zero cooperation."

In New York City, a similar executive order exists, but the areas of non-cooperation are reversed. While the New York City executive order of August 7, 1989, prohibits city officials from transmitting information regarding any alien to Federal authorities unless required by law to do so, the executive order also specifically instructs law enforcement agencies to continue to cooperate with Federal authorities. As a result, the INS reports that while cooperation with the New York City Police Department on criminal aliens is good, this executive order completely inhibits cooperation from local authorities regarding non-criminal aliens or so-called administrative violators.

While enforcement of immigration laws is a Federal responsibility and enforcement of criminal laws is generally a State and local responsibility, clearly the two are not mutually exclusive domains. As Senator Roth noted, many State and local officials have criticized the Federal Government for being unable to effectively police our Nation's borders. At the same time, some of these same jurisdictions have only made solving this problem that much harder by adopting non-cooperation laws and policies.

Yesterday, the Senate took action to remedy this problem by adopting, by a vote of 93 to 6, Senator Roth's amendment to the crime bill requiring local jurisdictions to cooperate with the INS. If this amendment becomes law, within 6 months the Attorney General will report to the Congress those local jurisdictions with non-cooperation policies. Such jurisdictions will not be eligible for funds authorized by the crime bill until such non-cooperation policies are discontinued.

In this investigation we also found problems involving non-cooperation by foreign governments. After a criminal alien has been ordered deported, one of the final steps in the process before that criminal alien can actually be deported is to secure documentation from the country receiving the deportee. This documentation is generally obtained by INS detention and deportation officers from a foreign country's U.S. embassy or consulate.

We have been informed by INS personnel from several district offices that a number of countries do not cooperate in providing this necessary documentation. The two countries most often cited as being a problem in this regard are Nigeria and Jamaica.

Under the Immigration and Nationality Act, the Attorney General has the authority to notify the Secretary of State regarding any country which, "upon request denies or unduly delays acceptance of the return of any alien who is a national, citizen, subject,

or resident thereof. . . ." The Secretary of State, after being notified of the failure of a foreign government to cooperate, is authorized to instruct U.S. consular officers in the non-cooperating country to stop issuing immigrant visas to nationals, citizens, subjects, or residents of that country. Apparently, however, with the exception of several then communist countries during the Cold War period, neither the Justice Department nor the State Department have ever invoked these procedures.

What can be done about ending the revolving door for criminal aliens that we have described today? First, Congress should consider radically simplifying the deportation process, as well as other laws regarding criminal aliens. For example, the distinction among aggravated and non-aggravated felonies and crimes of moral turpitude make the law substantially more complex. A single rule allowing deportation of alien convicted felons might make more sense.

Second, local, State and foreign governments must fully cooperate with the INS to help, not hinder it in accomplishing its most difficult mission. Third, the Attorney General and Secretary of State should get about enforcing current law against countries who fail to issue travel documents to deportable aliens. And, finally, the INS needs to revamp its records system and its organizational priorities if we are going to make real progress in stemming the tide of criminal aliens.

Thank you, and we will be happy to answer any questions that you have.

STAFF STATEMENT OF THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS¹

Introduction

Criminal aliens—non-citizens who commit crimes—are a growing threat to the public safety and a growing drain on scarce criminal justice resources. Our Federal and State prisons alone housed over 53,000 aliens. In 1980, this number was well below 9,000. Aliens now account for over 25 percent of Federal prison inmates and represent the fastest growing segment of Federal prison population. Our least estimate is that there are about 450,000 aliens who have been convicted of a crime and who are in prison, in jail, on probation or on parole at this time. Criminal aliens not only occupy beds in our prisons and jails, they also occupy the time and resources of law enforcement and our courts. Although immigrants to the United States have been, and continue to be, predominantly hard working and law abiding, there appears to be a growing criminal class among immigrants, especially among those here illegally.

The Subcommittee staff's investigation of the governmental response to the criminal alien problem has uncovered numerous flaws. Identifying these flaws is the first step towards correcting them. There is no doubt that the criminal alien problem will only increase and continue to burden our resources without an effective governmental response.

After providing a brief overview of the scope and magnitude of the criminal alien problem as well as the relevant legislative history, this staff statement will outline the Minority staff's findings to date with regard to the effectiveness of the governmental response to the criminal alien problem. The hearing for which this statement has been prepared will hopefully shed additional light on this subject.

It should be noted that "governmental response" refers primarily to the response of the Immigration and Naturalization Service (INS) since the INS is the lead agency with regard to criminal aliens.² There are, of course, other Federal, State, local as well as foreign governmental entities that play integral roles in any successful criminal alien program. The role that these entities play in conjunction with, and

¹This Staff Statement was prepared by the Minority Staff of the Permanent Subcommittee on Investigations of the Governmental Affairs Committee of the U.S. Senate.

²Immigration Act of 1990 Report on Criminal Aliens, April 1992 (Submitted by INS in compliance with Section 510 of IMMACT 90 [8 U.S.C. 1251]. Exhibit #24.

at times, in opposition to, the INS will also be outlined in this statement. Congress, of course, also shares responsibility as the drafter of the immigration laws that the INS is charged with executing and as the appropriator of INS funding.

Overview of Criminal Alien Problem

While the Federal, State and local correctional systems have struggled to keep pace with the swell of American prisoners, the number of criminal aliens they confine has increased at an alarming rate. The impact of their increasing numbers has been enormous. In 1980, there were just 9,071 "foreign-born" prisoners in State and Federal prisons.³ The INS has reported that in 1991 there were over 41,000 "foreign born" inmates in State prisons alone.⁴ States customarily report the number of "foreign born" prisoners. Since a person can be foreign born and still be a U.S. citizen, the Bureau of Justice Statistics (BJS) findings are most relevant to the present discussion. The BJS estimates that in 1991 there were 31,300 "aliens" in State prisons.⁵

The increase in number of aliens in the Federal prisons is also noteworthy—the number more than doubled between 1988 and 1993. Currently, BOP confines 89,078 prisoners and 22,626 (about 25 percent) are aliens, while in 1988 BOP confined 10,647 aliens—21 percent of the then total Federal prison population of 50,553.⁶ The five States most heavily burdened by alien prisoners, according to a 1992 survey by the National Institute of Corrections, are: California (10,575; 10.4 percent of prison population); New York (7,168; 12.4 percent of prison population); Florida (3,313; 7 percent of prison population); Illinois (2,912; 1 percent of prison population) and Texas (2,187; 4.3 percent of prison population).⁷

Approximately 47 percent of the State and 36 percent of Federal alien prisoners are from Mexico. States confine large numbers of aliens from the Caribbean (26 percent), and from Central and South America (14 percent). Crimes for which aliens are confined are primarily drug related (45 percent) or violent (34 percent). The Federal prison system confines many Colombians (20 percent); Cubans (9 percent); and, Dominicans (6 percent). BOP confines an even higher percentage of aliens convicted of drug offenses, nearly 80 percent of the total number of confined aliens.⁸

Law enforcement costs money and a considerable amount of money is being spent policing, adjudicating, confining and deporting criminal aliens. In 1990, State, local and Federal Governments directed over \$74 billion tax dollars for law enforcement activities. A full year of imprisonment (which of course is only a part of law enforcement costs) in 1990, according to a recent BJS report, cost approximately \$15,600, per prisoner.⁹ The number of State and Federal aliens in prison in 1990–91 (estimated to be 46,000 using BOP and BJS figures), can be multiplied by the annual per capita cost (estimated at \$15,600) to produce a conservative cost estimate of approximately \$724 million for confinement.

This cost estimate is likely to be low. First, the BJS used survey methods to estimate the number of State alien prisoners. Such prisoners would be expected to under report their alien status. That is because many aliens in prison may feel it would be risky to disclose their alien status to government interviewers as they would to any law enforcement and corrections authorities in the first place. Similarly, the cost figures from 1990 are dated, and are presumed to be low. One non-Federal source, "The Corrections Yearbook, 1993" estimates that in 1992 the average cost of confining one prisoner for 1 year exceeded \$18,250.¹⁰

These cost estimates are conservative because they do not account for estimates of criminal aliens in local jails and on probation and parole.¹¹ Yet, the numbers are likely to be quite high and so are the costs. How many aliens are in jails on probation or parole? In some locales, the number cycling through jails is very high. In

³ Historical Corrections Statistics in the United States, 1850–1984." Westat, Inc. Rockville, Maryland, 1986. Exhibit #37.

⁴ Immigration Act of 1990 Report on Criminal Aliens, April 1992 (Submitted by INS in compliance with Section 510 of IMMACT 90 [8 U.S.C. 1251]. Exhibit #24.

⁵ Survey of State Prison Inmates, 1991." Report by the Bureau of Justice Statistics, Washington, D.C. 1993.

⁶ Figures provided by the Bureau of Prisons, Office of Research and Evaluation, October 20, 1993.

⁷ Unpublished report, National Institute of Corrections, 1992.

⁸ Figures are taken from the "Survey of Prison Inmates, 1991", Bureau of Justice Statistics, Washington, D.C., 1993. Also figures were provided by the BOP's Office of Research and Evaluation, Washington, D.C. October, 1993. Exhibit #38.

⁹ "Census of State and Federal Correctional Facilities 1990." Bureau of Justice Statistics. Washington, D.C. 1992.

¹⁰ "The Corrections Yearbook, 1993" Camp and Camp, South Salem, New York. 1993.

¹¹ The INS Statistics Department surveyed jails in the U.S. in 1993. INS will estimate the number of aliens in jails with this data. However, results are currently unavailable.

Los Angeles, 22,000 deportable aliens probably circulated through the county jail annually judging from the results of several studies.¹² The INS has collected information on "foreign-borns" in U.S. jails, but has not compiled results. The actual number of criminal aliens on probation and parole is also unknown but we can assume the figure is high. Parole populations are very similar to prison populations. The notion that aliens on probation might not have committed deportable offenses is difficult to support. There are more persons on probation than under any other form of correctional supervision, 2,670,234. According to the Justice Department's Bureau of Justice Statistics, more than half of all persons on probation in 17 States across 32 counties committed felony crimes.¹³ At the time sentences were delivered, 27 percent of those convicted of a violent felony (murder, rape, robbery, and aggravated assault) received a straight probation sentence, or a jail-probation sentence. We would therefore expect significant numbers of deportable persons may be under the control of probation authorities.

Also missing in the \$724 million figure are INS resources used to investigate, detain and deport criminal aliens. And of course, crimes committed by aliens cost in other less direct, but very painful ways: ultimately, honest American citizens absorb the damages done by criminal aliens. The total cost estimate is additionally conservative because it does not include heavy law enforcement costs of investigation (mainly a local and State police function). Another factor is that criminal aliens take up bed space needed for other prisoners. Some expensive additional prison construction could likely be avoided were it not for this displacement of bed space by criminal aliens.

In 1992 the INS deported 18,375 criminal aliens. This is a 30 percent increase from 1991 and more than double the number deported in 1990.¹⁴ While the increase is impressive, the figures mask the fact that criminal aliens stream back in across the border in large numbers following deportation—especially along the south-west border. In its 1992 report to Congress, the INS reported that, for fiscal year 1991, 461 aliens reentered the U.S. after being convicted of a criminal offense. Anecdotal evidence suggests that deportation is not a significant deterrent to reentry. That may be in part because several border U.S. Attorney's offices have policies that limit prosecution to offenders who have multiple illegal reentries and for multiple felonies. Other districts have informal caps on the number of reentry cases they will prosecute.¹⁵ Even though the maximum potential sentence for reentry after deportation is 15 years, most reentry prosecutions are plea bargained to a lesser sentence.

History of Immigration Legislation Regarding Criminal Aliens

For much of this country's history there has been no comprehensive body of immigration law and no laws addressing criminal aliens. The Federal Government first assumed an active role in immigration policy with the enactment of the first general immigration statute in 1882. The 1882 statute addressed criminal aliens by barring the entry of so-called undesirables, including convicts, mental defectives and paupers. The Act did not, however, provide for the deportation of aliens who committed crimes after entering the U.S.

In 1917 and 1924, restrictive immigration legislation was enacted. The 1917 Act included the first criminal ground for deportation. The Act provided for the deportation of aliens who committed "serious crimes" within 5 years after entry. The Act also provided for deportation of aliens who after entry proved to be "criminals of the confirmed type" without limitation on length of time after entry.¹⁶

The Immigration and Nationality Act (INA) of 1952 was a major recodification and revision of the immigration laws. The INA codified and carried forward many of the restrictive elements enacted in 1917 and 1924 and contained "cold war" provisions relating to the exclusion of communists. The INA also clarified and expanded Federal authority for deporting certain criminal aliens and specified "crimes of moral turpitude" as crimes which could subject an alien to deportation. Our criminal alien policies continue, to this day, to operate under the framework established in 1952 by the INA.

Thus, under the INA, the INS may apprehend and deport criminal aliens who have been (1) convicted of a crime involving moral turpitude committed within 5

¹² Reports prepared by the Los Angeles Countywide Coordination Committee, November, 1990, July 1992 and November 1992.

¹³ "Recidivism of Felons on Probation, 1986-89" by Langan, Patrick A. and Cunniff, Meck, BJS Special Report, February 1992.

¹⁴ Briefing document for the Commissioner of the INS, 1993 prepared by the Detention and Deportation Division. Exhibit #39.

¹⁵ Data were provided to the Permanent Subcommittee on Investigations by the United States Department of Justice. Washington, D.C., October, 1993.

¹⁶ See Senate Report 64-352 (64th Congress, 1st Session, December 7, 1916.)

years of entry and sentenced to confinement for a year or more, or (2) convicted of two or more crimes involving moral turpitude, not arising from a single action, at any time after entry regardless of whether confined.¹⁷ (Crimes of moral turpitude include murder, manslaughter, rape and sodomy.) Aliens convicted of drug and firearm offenses are also deportable. Once deported, aliens are considered to be excludable, which means they cannot reenter the country without the permission of the Attorney General for 5 years after deportation. Reentry after deportation is a felony.

The next major piece of immigration legislation which included provisions addressing criminal aliens was the Immigration Reform and Control Act of 1986 (IRCA).¹⁸ IRCA required that the INS begin deportation proceedings against aliens with deportable offenses as expeditiously as possible after their convictions. IRCA authorized general increases in all enforcement activities and contained provisions to improve interior (areas removed from the borders) enforcement against criminal aliens. IRCA also authorized the Attorney General to reimburse States for costs incurred imprisoning illegal aliens convicted of felonies. These authorizations, however, were never funded.

The Narcotics Traffickers Deportation Act (Subtitle M of the Anti-Drug Abuse Act of 1986) significantly broadened the range of narcotics violations subjecting a criminal alien to exclusion or deportation. Prior to the 1986 Act, only those aliens convicted of violating a law or regulation regarding an "addiction-sustaining opiate" could be deported. The 1986 law did away with the addiction-sustaining opiate language and replaced it with the current and broader language—controlled substance. The Act also required that the INS respond promptly to referrals from Federal, State and local law enforcement regarding alien arrests for violations of narcotics laws.

The Anti-Drug Abuse Act of 1988 made further changes to the INA with regard to criminal aliens.¹⁹ The most significant of these changes was the creation of a new class of criminal alien—aliens convicted of an aggravated felony. Aliens who commit aggravated felonies are deportable, and are subject to different treatment under the law than other deportable criminal aliens. For example, aggravated felons are precluded from certain types of relief that non-aggravated felons may seek. Aggravated felonies include drug trafficking, firearm offenses, money laundering, certain crimes of violence and murder.²⁰ For the purposes of the aggravated felony definition, drug trafficking has been broadly defined as "any trade or dealing, and any drug trafficking crime."²¹

The 1988 Act required, among other things, that an alien convicted of an aggravated felony be taken into INS custody upon completion of his sentence, be ineligible for release under bond, and be ineligible for voluntary departure unless he is a permanent resident and is not a threat to the community and is likely to appear for his hearing. The clear intention of this provision was to prevent the very worst of the criminal aliens from further endangering the public and from being able to flee before deportation. This provision, however, was weakened substantially by a later "technical amendment." This so-called technical amendment allowed not only aggravated felons who are permanent resident aliens to be released, but also all aggravated felons who entered the country legally even though they may have quickly became illegal.²²

The 1988 Act also mandates a 24 hour alienage determination capability so that the INS could respond to law enforcement inquiries, and an INS computer system to maintain records of aliens convicted of aggravated felonies who have been deported. The Act further mandated that the INS institute special deportation proceedings within correctional institutions for aliens convicted of aggravated felonies to eliminate the need for detention and to ensure expeditious deportation.

The Immigration Act of 1990²³ (IMMACT 90) contained several provisions dealing with criminal aliens. A provision to aid the INS in deporting criminal aliens, known as section 507, required that States provide the INS, within 30 days of the date of conviction, notice of convictions of aliens and provide any requested certified record of conviction, without fee, within 30 days of a request by INS. This provision, and others, sought to improve the necessary liaison between State criminal justice enti-

¹⁷ INA Section 241(2), [8 U.S.C. 1251]

¹⁸ Public Law 99-603, November 6, 1986.

¹⁹ Public Law 101-649, 104 Stat. 4978.

²⁰ INA section 101(a)(43), [8 U.S.C. § 1101 (a) (43)].

²¹ Gordon and Mailman, "Immigration Law and Procedure", Vol. 3 (1993) S. 71.05[2][b], citing *Matter of De La Cruz*, 9 Immigration Report or B1-93 (I.D. 3155 BJA 1991).

²² See INA Section 242(a)(2)(B) as amended by The Immigration Act of 1990, Section 504(a)(B), of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Section 306(a)(4).

²³ Public Law 101-649, 1990.

ties, which have initial contact with the bulk of criminal aliens, and the INS which is responsible for removal of criminal aliens.

While the U.S. has had a basic legal framework for addressing the problem of criminal aliens since 1917, modern immigration law changes as evidenced in the 1965 Act, and most recently IRCA and IMMACT 90, have dealt with the problem of criminal aliens mostly as an afterthought. In fact, no major immigration legislation has focused exclusively on the problem of criminal aliens. Rather, criminal aliens have been dealt with in piecemeal fashion in a series of immigration and crime related bills.

Overview of INS Alien Criminal Apprehension Program

According to recent testimony of Cynthia Wishinsky, Director of the INS Criminal Alien Branch,²⁴ the INS implemented its Alien Criminal Apprehension Program (ACAP) in 1986. The goals of the program according to Wishinsky are: to identify, locate and initiate removal proceedings against criminal aliens; to ensure expeditious removal of convicted alien criminals, and, to create an effective deterrent against aliens seeking entry into the United States to engage in crime.

Although the INS claims to carry out its Alien Criminal Apprehension Program through proactive and reactive measures, a large portion of INS resources appear to go into reactive strategies. This reactive strategy basically involves identifying criminal aliens already involved in the criminal justice system for reasons other than immigration violations, and the instituting of deportation proceedings against those criminal aliens. Ideally, the system should work as follows: the criminal alien is identified while incarcerated in a local, State or Federal correctional facility; after being identified, the INS determines whether the criminal alien is potentially deportable; if the criminal alien is potentially deportable, the INS places what is known as a detainer on the alien (the detainer requests that the correctional system that is incarcerating the criminal alien notify the INS before it releases the criminal alien so that the INS can physically detain or conditionally release the criminal alien pending removal); and finally, the INS institutes deportation proceeding against the criminal alien.

According to Wishinsky, this process, "is an extremely effective and efficient use of INS resources because these aliens have already been arrested and detained or incarcerated, thus minimizing the expense and effort which would otherwise be required for INS to locate and detain them."²⁵ While the process may be effective and efficient in producing larger numbers of criminal deportations, it has many flaws.

Within the Alien Criminal Apprehension Program, the INS has several "sub-programs." One such program is the so-called Five State Criminal Alien Model. This project focuses INS resources on States with the highest concentration of foreign-born inmates. These five States are California, New York, Texas, Florida and Illinois. The project seeks, through discussion and agreement among Federal State and local entities, to improve identification, processing and removal of criminal alien inmates.

Another program within the Alien Criminal Apprehension Program is the Institutional Hearing Program. The Institutional Hearing Program is a cooperative program between the Executive Office of Immigration Review, the INS, six Federal prisons, 65 State prisons and the Los Angeles County Correctional System. The Institutional Hearing Program allows the INS and the Executive Office of Immigration Review to begin deportation proceedings for criminal aliens during their incarceration for their underlying criminal convictions. The Institutional Hearing Program serves the dual purpose of helping the INS comply with the Immigration Reform and Control Act mandate that the INS begin deportation proceedings against aliens with deportable offenses as expeditiously as possible after their convictions and also serves to reduce INS detention cost by deporting criminal aliens prior to their release and potential detention by INS. As noted, however, the INS is required by law to detain only a small percentage of criminal aliens after their release from Federal, State or local incarceration. Although the 1988 Anti-Drug Abuse Act mandates that the INS detain all aggravated felons after their release from prison pending their deportation, as mentioned previously, a "technical" amendment to IMMACT 90 permits discretionary release on bond in deportation cases for aggravated felons who entered the U.S. legally.²⁶

²⁴Testimony of Cynthia J. Wishinsky, Director, Criminal Alien Branch, before the Information, Justice, Transportation and Agriculture Subcommittee of the Committee on Government Operations, August 31, 1993.

²⁵Ibid at p. 4-5.

²⁶INA Section 242(a)(2)(A), 8 U.S.C. Section 1252(a)(2)(A), as amended by Section 504 of IMMACT 90.

As part of the Alien Criminal Apprehension Program, the INS also uses several central facilities established to detain criminal aliens that the INS receives into its custody. One such facility is the Federal Detention Center in Oakdale, Louisiana. The INS moves some criminal aliens who have completed their sentences in State, local and Federal facilities from locations throughout the country to Oakdale FDC for their immigration hearing. INS's Service Processing Center in San Pedro, California is used as a centralized detention facility for West Coast criminal aliens.

Governmental Failure to Effectively Combat the Growing Problem of Criminal Aliens

The staff investigation found serious and in some cases long-running problems with the INS criminal alien program. These problems are found at the initial identification stage, the final deportation stage and most points in-between. In addition, staff found that the INS cannot accurately measure the extent of the criminal alien problem nor its response to that problem because the INS record system is so limited.

INS Record System

The INS recordkeeping system for criminal aliens is outdated and seriously flawed. The system's many failures allow criminal aliens to easily evade INS detection. These failures stem from the fact that the INS does not have a central record-keeping system for specifically tracking criminal aliens. Moreover, the central recordkeeping system which INS does have is name-based and thus unable to readily identify those criminal aliens who employ multiple aliases.

All criminal aliens known to U.S. authorities are assigned what is known as an "A" number. For each alien assigned an "A" number, the INS creates a paper file for that individual known as an "A-file." Once an A-file is established, certain information on the alien, including the alien's name and date of birth, is fed into the INS central index system. The central index system can be accessed by INS officials Nationwide. To access the central index system, an INS official enters the name of a suspected alien. If the system identifies more than one alien with a given name, a date of birth can be entered to further narrow the search. Once the central index system identifies an alien, the searcher can then access a limited amount of information about the alien and the location where the A-file is physically located. (An A-file is typically stored in the district office where it was opened.) The officer can then request that the file be sent to him.

A major weakness of the central index system is that it is name-based. Criminals, including criminal aliens, tend to use multiple names or aliases. A Los Angeles study found that the typical criminal alien used an average of seven aliases.²⁷ If a criminal alien who is already in the central index system and has an A file is arrested under an alias, a query of the INS central index system will provide no match. If some INS action is required, the INS agent handling the case may not learn of the already existing file on the individual, and consequently will open a new A-file for this "newly encountered" alien. It is thus not uncommon for a criminal alien to have several A-files in the INS record system, with each file showing only part of the criminal and immigration history of the alien.²⁸

The case of Jose Carmen Encarnacion illustrates the system's flaws. (An affidavit of Mr. Encarnacion is included in the record). In 1976, Encarnacion entered the U.S. from his country of citizenship, the Dominican Republic. Encarnacion was apprehended and then deported back to the Dominican Republic in 1977. At some point before 1980, Encarnacion reentered the U.S. and proceeded to commit a series of serious crimes in the New York area. He was eventually arrested, convicted and incarcerated by New York authorities for several years. After being released from prison, he was not deported or detained by INS or prosecuted for re-entry, even though he had re-entered after deportation in violation of the law. Subsequently, Encarnacion was arrested in New York and Louisiana, but fled both States. In 1988, Encarnacion was apprehended in Puerto Rico where he admitted to immigration officials that he had entered the U.S. without inspection. Although Encarnacion was deported for the second time, INS officials were apparently not aware of his earlier deportation because he was using an alias. In any event, he was not prosecuted for re-entry after deportation. In fact, between 1977 and 1988, Encarnacion used a minimum of 10 names and five dates of birth. INS had created an immigration file for Encarnacion in 1977 and a second separate file for Encarnacion using a different

²⁷ Impact of Repeat Arrests of Deportable Criminal Aliens in Los Angeles County, Final Report, July 15, 1992, Ad Hoc Subcommittee on Criminal Aliens, at p. 15. Exhibit #30.

²⁸ A study done at the Los Angeles County Jail indicated that the typical criminal alien encountered there had employed seven different aliases. Criminal Aliens in the Los Angeles County Jail Population, Final Report 1990, Ad Hoc Subcommittee on Criminal Aliens. Exhibit #25.

name and date of birth in 1988. Although Encarnacion's fingerprints were taken many times, including several times by the INS, the INS did not, and does not, have the capability to search its files using fingerprints as identifiers.

Encarnacion returned to the U.S. after his second deportation in 1988 and proceeded to commit, and eventually be arrested for, a series of crimes. After 16 years of criminal activity in the United States, and 13 years after first being first deported, Encarnacion is now, for the first time, being prosecuted for re-entry after deportation. This prosecution occurred only because INS discovered that Encarnacion had been deported several times after an agent's suspicion lead to a manual search of fingerprint records to determine that Encarnacion had been previously deported under different names.

INS Identification of Criminal Aliens in the Criminal Justice System

The staff's investigation found many problems with the INS's stated objective to "systematically identify, locate and initiate removal proceedings against criminal aliens, whether or not incarcerated."²⁹

The staff's investigation found that the majority of criminal aliens identified by the INS are criminal aliens who are incarcerated in State or Federal prisons. A basic problem with this arrangement is that correctional systems do not accurately identify aliens within their inmate population. Correction officials are not trained to determine alienage and generally merely identify those inmates who claim to be "foreign born." The INS, however, depends on lists of foreign borns supplied by correctional officials to make their initial identification of deportable criminal aliens. Under this arrangement, a deportable criminal alien could avoid INS detection and deportation by simply claiming to be U.S. born.

In most cases the INS is notified—typically given a list—by State law enforcement or corrections officials, of foreign born individuals who have been incarcerated. One way for a criminal alien to evade INS detection is to falsely inform State correctional that he is not foreign born. One INS district director told staff that INS agents noticed that a particular State prison system had an unusually high number of inmates from the U.S. Virgin Islands and Puerto Rico. On closer inspection it was discovered that inmates from other Caribbean Nations were routinely claiming to have been born in the U.S. Virgin Islands or Puerto Rico in an effort to avoid INS detection.

A second problem is that many State corrections systems and most county and local jails are not systematically monitored by the INS in an effort to identify criminal alien felons who are deportable. No effort appears to be made by INS to identify deportable alien felons who receive probation rather than sentences of incarceration. The result is that large numbers of deportable criminal aliens evade the first level of consideration for potential deportation. Even in those State prison and jail systems where the INS claims to be systematically identifying criminal aliens there are numerous ways in which criminal aliens avoid deportation proceedings.

The task may be beyond INS's resources when one considers that there are 7,665 correctional facilities and offices and only about 1,100 INS investigators to monitor them. The wisdom of using highly trained investigators to do relatively routine monitoring of prisons has, however, been questioned. Some INS investigators feel using them to monitor prisons is poor application of INS resources. In fact, INS investigators are frequently rotated out of such monitoring assignments lest their grade levels be lowered.

Some criminal aliens evade the deportation process by completing their sentences in State prison before the INS has identified and, if necessary, placed a detainer on the individual.

As part of our investigation, we reviewed the Institutional Hearing Program for the Los Angeles County Jail, the only such program in the country which operates at the county jail level. The Los Angeles County Jail system is one of the largest jail systems in the world, holding approximately 20,000 inmates at any given time. According to the Los Angeles County Sheriff's Office, the average inmate stay is 30 days with over 260,000 prisoners passing through the system each year.³⁰ Thus inmate population turnover is very high. A 1990 study estimated that 11 percent of the inmates in the Los Angeles County jail system are deportable criminal aliens.³¹

The Institutional Hearing Program at the Los Angeles County Jail is a cooperative effort of the INS, EOIR and the Los Angeles County Sheriff's office. The Sher-

²⁹ Wishinsky testimony, August 31, 1993, at p. 4.

³⁰ Staff interview with Alan Chancellor, Area Commander, Custody Division, Los Angeles County Sheriff (9/1/93).

³¹ Criminal Aliens in the Los Angeles County Jail Population, Final Report 1990, Ad Hoc Subcommittee on Criminal Aliens. Exhibit #25.

iff's office personnel supply INS with a list of new foreign born inmates each day. The INS reviews that list and conducts interviews periodically. Most of these interviews, however, are conducted just before the prisoners are due to be released from custody and, according to an INS official, detainees are placed only on the "worst of the worst," as time permits.

While EOIR assigns an immigration judge to the Los Angeles County Jail 1 day each week, the judge often has little business. A review of EOIR records shows that as few as six criminal alien cases are presented to EOIR judges on a given day even though an immigration judge can adjudicate up to 30 cases in a half-day session. Obviously, with an estimated 2,200 aliens within the Los Angeles County correctional system at any given time, there are large numbers of criminal aliens who escape INS detection.

Targeting of "Quick Deports"

The INS has a policy of targeting those criminal aliens who are likely to be easily deported—so-called "quick deports." This policy, while substantially inflating INS deportation statistics, primarily serves as an ineffective revolving deportation door for many criminal aliens. Because many U.S. Attorney Offices are reluctant to prosecute criminal aliens for re-entry after deportation, and because criminal aliens often confuse the INS with their use of multiple aliases, deportation is too often at worst an inconvenience, and at best a free trip home for a short visit for criminal aliens before they return to the U.S.

A significant percentage of criminal alien deportations are of criminal aliens who do not contest their deportation and in many cases even wish to be deported. These "quick deports" are predominately Mexican or Central American nationals, who are here illegally and have usually been convicted of drug offenses. The Institutional Hearing Program (IHP), as it is currently conducted, targets these quick deports.

The EOIR has eligibility criteria to determine which criminal aliens will have their removal case heard in the Institutional Hearing Program. These criteria serve to weed out contested or complicated removal cases. With the Institutional Hearing Program focused on quick deports, a single immigration judge can easily adjudicate large numbers of cases in a short period of time.

The Institutional Hearing Program hearings observed by staff typically involved less than five minutes each. The immigration judge has the criminal alien identify himself, informs the criminal alien of the charges against him and his rights, gives the criminal alien the opportunity to make objections and then, when no objections or motions are made, orders the criminal alien deported.

Once the INS receives travel authorization from the country to which the criminal alien is being deported, the alien is transported to that country at INS expense. Mexican nationals ordered deported through the Institutional Hearing Program at California's Donavan State Prison, conveniently located a few miles from a Mexican border checkpoint, are loaded in buses, driven to the checkpoint and handed over to Mexican authorities or simply released into Mexico.

Although a 1992 report to Congress reported that INS agents encountered and arrested only 461 criminal aliens who had re-entered the U.S. in fiscal year 1991 after deportation, staff believes that the number of such reentries is many times higher. One criminal alien staff interviewed, Richard Simons, was a "quick deport". He never contested any of his three deportations and he was processed expeditiously through the Oakdale, Louisiana facility on his latest illegal reentry. But each time following deportation he and friends travelled with impunity back across the border into the U.S. Following his first two deportations he returned to the U.S. for extended periods of time and became a virtual one-man-crime wave of theft, fencing of stolen property, drugs and forgery offenses.

Given the inadequacies of the INS record system, even if a deportee is arrested by the Border Patrol for border jumping, or attempting to cross the border illegally, it is very unlikely that the Border Patrol would be able to identify the alien as a recent deportee. Moreover, since many Federal prosecutors on the Southwest border limit the number and types of individuals they will consider for prosecution for the crime of reentry after deportation, there is little deterrence to reentry even if a deported alien is unlucky enough to have been arrested and properly identified. Furthermore, even when such prosecutions are undertaken, they are typically plea bargained down substantially from the 15-year maximum sentence which Congress has provided for reentry after deportation.

As one INS official only half jokingly told staff, "We only deport those who want to be deported. They are willing to be deported because it is so easy to come back."

The case of Manuel Castillo-Catalan is an example of how quick deports are often also "quick returns." Catalan is a Mexican national who was first deported in 1984 after serving 7 years for second degree murder. Catalan did not contest his deporta-

tion. After being ordered deported, Catalan was driven by bus to a Mexican border town. Catalan was arrested a short time after returning and was deported a second time in 1984. Catalan was again driven to the same Mexican border town where he spent several days before returning to the U.S.

In 1989, Catalan was arrested on a narcotics charge. After spending several years in a California prison, he was deported for a third time on June 26, 1992. Catalan had not contested his deportation and was again driven to the Mexican border. On June 27, 1992, Catalan returned to the U.S. In December of 1992, Catalan was arrested and for the first time charged with the crime of re-entry after deportation, and is now serving a sentence of 57 months.

By targeting "quick deport" criminal aliens such as Catalan or Simons, INS is able to deport large numbers of criminal aliens. These same criminal aliens—typically Mexican and Central Americans with no lawful U.S. immigration status and long criminal histories—are also the criminal aliens most likely to repeatedly return after deportation. These aliens are part of a revolving door that allows the INS to claim, statistically, that it is doing something about the problem of criminal aliens.

Inability of INS to Process Criminal Aliens for Deportation Prior to their Release

The staff found that the INS does not complete the deportation process for a large number of criminal aliens before completion of the criminal alien's underlying sentence. A June 1992 GAO report found that in February 1991, only about 6 percent of the criminal aliens completed their hearings before their release.³² This figure is particularly troublesome when one considers that the institutional hearing program is specifically designed to complete the deportation process prior to a criminal aliens release. The inability to complete the deportation process prior to the completion of the underlying sentence has several serious ramifications. These ramifications stem from the fact that when the deportation process is not complete, the INS has to either detain or release the criminal alien. The detention option is problematical because it takes up limited INS bed space and because it costs money. Release, on the other hand, is even more of a problem since large numbers of non-detained criminal aliens never show up for their deportation hearings.

The Immigration and Nationality Act calls for the expeditious removal of criminal aliens. The Act further requires the INS to initiate and complete, to the extent possible, deportation proceeding against aggravated felons before the aliens are released from incarceration for the underlying felony.³³ According to the INS, the institutional hearing program was established to help comply with this legislative mandate.³⁴

Many criminal aliens, including those aggravated felons channelled into the institutional hearing program, are not fully processed before the release date for their underlying crime.

The INS inability to efficiently process criminal aliens is illustrated by problems staff discovered at the Oakdale, Louisiana Federal criminal alien detention and processing facilities. The Oakdale Louisiana facilities include two Federal prisons and a Federal prison camp, EOIR and INS offices. One prison (the correctional institution) contains aliens nearing completion of their Federal sentences. The other, (the detention center) jointly operated by the INS and the BOP, confines aliens who have served State prison sentences, but have not yet completed their removal proceedings. EOIR hears cases from both prisons.

Ideally, the correctional institution should receive aliens from Federal prisons who have at least 6 months remaining on their sentences, so the immigration procedures can be completed prior to completion of sentences. But actually, many cases are received with less than 1 month remaining. This slows the movement of aliens out of the Correctional Institution and means the government must absorb the expense of detention past sentence expiration.

The detention center, ideally, should receive aliens from States with most of their paperwork completed. In fact, aliens arrive at the detention center with little case work completed. Although the detention center was not intended to house Federal prisoners, it has had to absorb "spill over" of Federal alien prisoners who could not be processed at the correctional institution prior to sentence expiration.

The delays stem in large part from INS failure to collect information about the identity of criminal aliens in prisons in a timely fashion. This point is made by the following example: the INS recently gained access to the Federal Bureau of Prison's prisoner data base system, Sentry, which contains national data on citizenship. INS

³² Report on Immigration Control: Immigration Policies Affect INS Detention Efforts, GAO/GGD-92-85, June 1992 at p. 39.

³³ See Section 242A, [8 U.S.C. 1252].

³⁴ Immigration Act of 1990, Report on Criminal Aliens (April 1992). Exhibit #24.

was immediately able to identify 6,000 additional Federal prisoners eligible for new INS detainers. INS had not previously been aware of these prisoners.

But early identification of alien prison inmates by the INS does not guarantee that the flow of prisoners to the Federal complex will take place in a timely fashion or that the INS paperwork will be completed before they arrive. This is not always the responsibility of INS. Some States upon learning that INS wants to take custody of a prisoner when the prisoner's sentence expires, may advance the prisoner's release date and turn him over to the INS sooner than expected.

Although prison officials and the INS could use normal prison processing routines to identify criminal aliens, in some systems determining alienage is not considered an important task and, consequently, many criminal aliens will not be identified. In Delaware, for example, contact between corrections officials and the INS is minimal. Upon intake, the prison staff ask prisoners where they were born, and the response is typically accepted—whatever it might be. In contrast, in the Federal system, the U.S. Probation Office prepares a Pre-Sentence Investigation on most Federal prisoners. Officers are required to document place of birth. If there is any doubt about a prisoners' citizenship, probation officers are obliged to contact the arresting agency, the INS, or even INTERPOL to determine alienage.

Bond and asylum appeals may also delay deportation proceedings. Although a complete description of these issues is beyond the scope of this report, some immigration judges cited them to staff as problem areas that frequently contribute to delays.

Lack of INS Detention Space

Although detaining a criminal alien pending his removal proceeding guarantees that the alien will actually appear at that proceeding, this option is often not available due to INS's chronic lack of detention space. (INS has only approximately 3,500 detention beds for criminal aliens in the entire country.) Some districts, however, have far fewer detention beds than they need to detain criminal aliens. For example, the Pennsylvania district which includes Delaware and West Virginia has only 15 detention beds. The lack of INS detention space in many of its districts puts pressure on the INS to release, rather than detain, criminal aliens. The INS can, and does, pay county jails to hold its detainees. An additional option is for an INS District to transfer a criminal alien to a Federal facility such as Oakdale detention center. Subcommittee staff learned, however, that INS districts are reluctant to utilize the transfer option since the transferring district will also transfer its "credit" for a completed deportation to the receiving district.

In the majority of cases, the need to detain criminal aliens after they have served their underlying sentence indicates INS inability to completely process criminal aliens for removal prior to their release date. This inability has several serious ramifications. The first, and most basic, is that detention is costly and takes up prison and jail space. Second, as mentioned, this inability puts pressure on the INS to release criminal aliens which greatly increases the criminal aliens chances of evading removal.

Release of Criminal Aliens

Many criminal aliens who are released pending their deportation are likely to never appear for their deportation proceeding. Staff learned that over 20 percent of non-detained criminal aliens do not appear for their deportation proceeding; failure to appear rates were highest for criminal aliens who were never detained at any time, 42 percent. As of 1991, the INS reported to Congress that some 10,875 aliens convicted of aggravated felonies failed to report for deportation proceedings. It is unclear what systematic efforts, other than to feed the names into law enforcement databases, the INS takes to locate and bring in those criminal aliens who fail to appear for their deportation proceeding. In addition, although some are tried and ordered deported in absentia, the alien still has to be located and apprehended.

A related problem involves criminal aliens who have absconded after being issued a final order of deportation. Under the INS practice, undetained criminal aliens who have been ordered deported are given 72 hours to report for deportation. Staff was told that this notice is often referred to as the "run notice" since, as one would expect, criminal aliens who have been ordered deported and sent written notices to report for deportation often fail to appear to their actual deportation. In New York, for example, in fiscal year 1993, out of 1695 such notices to surrender sent to criminal and non-criminal aliens, 1486, or 87.7 percent failed to surrender. Also in New York, there were \$2.4 million in bonds breached in fiscal year 1993. Staff also discovered that the number of criminal aliens physically removed has been less than the number ordered deported for each year since 1989. Although the number of deportations have risen steadily, the number of actual physical removals has increased

less precipitously yielding a total of 18,641 criminal aliens who have been ordered deported yet were not physically removed.

Current Procedures Allow Delay and Abuses of Deportation Process By Criminal Aliens

Criminal aliens who wish to contest their deportations have a host of avenues by which to do so. As Chart A shows (see Exhibit #12), the deportation process for criminal aliens is byzantine to say the least.

One common motion filed by detained criminal aliens who have been granted the right to release under bond, but have not yet posted bond, is a motion to have their bond reduced. Currently, there is no limit to the number of times a criminal alien can bring such a motion. Staff learned from one immigration judge that detained criminal aliens often repeatedly appeal for reduction of their bonds taking up court time and expense.

Some criminal aliens attempt to prevent their deportation by filing an asylum claim at some point before, during or after their deportation hearing. In 1992, out of 8,273 institutional hearing program cases alone, 219 criminal aliens filed asylum claims. Once an alien files an asylum claim, the issue of asylum must be decided. Asylum, itself, is a separate process that can easily take years to resolve.

One of the most common forms of relief from deportation sought by criminal aliens are so-called section 212(c) applications.³⁵ Under section 212(c), criminal aliens lawfully admitted for permanent residence who have been in the U.S. for 7 years, and who have not served a sentence of 5 years or more for felony, can be granted relief from deportation. Time spent incarcerated is often included as part of the 7 year U.S. residence requirement under this section. In 1992, out of 8,273 institutional hearing program cases alone, 1,015 criminal aliens made section 212(c) claims.

Criminal aliens also seek to avoid deportation under section 243(h)(1). Under this section, a criminal alien cannot be deported if the alien's life or freedom would be threatened in the country where the alien is to be deported on account of race, religion, Nationality, membership in a particular social group, or political opinion. Those aliens determined to constitute a "danger to the community of the United States," are not eligible for relief under this provision.

State and Local Non-cooperation with the INS

Essential to any effective governmental response to the criminal alien problem is cooperation among law enforcement at all levels—local, State and Federal. However, over the last decade, some local jurisdictions have enacted laws, often referred to as refuge, sanctuary or non-cooperation laws, that limit local government law enforcement officials' cooperation with the INS. This has occurred most frequently in California.

In 1986, the Oakland California City Council unanimously adopted a resolution declaring Oakland to be a 'City of Refuge' and serve as a safe haven for refugees from El Salvador, Guatemala, Haiti and South Africa." The resolution instructed all Oakland city employees to "refrain from assisting or cooperating" with the INS relating to alleged violations of the civil provisions of the immigration laws. The resolution further urges that the California State Legislature make California a "State of Refuge."³⁶

In 1989, the San Francisco California Board of Supervisors approved an ordinance making San Francisco "a City and County of Refuge." Broader than the Oakland resolution, the San Francisco ordinance was not limited to any particular foreign Nations. Rather, it generally prohibited the use of "City funds or resources to assist in the enforcement of Federal immigration law . . . unless such assistance is required by Federal or State statute, regulation or court decision." The ordinance is inapplicable to persons charged with or convicted of felonies.³⁷

While Los Angeles, California does not have a refuge ordinance, the Los Angeles Police Department (LAPD) does have a policy of not permitting LAPD officers to inform the INS when they come in contact with illegal aliens except in limited circumstances. The LAPD Manual states: "Undocumented alien status in itself is not a matter for police action."³⁸ Further, according to the LAPD Manual, "Officers shall not initiate police action where the objective is to discover the alien status of

³⁵ INA Section 212(c); [8 U.S.C. 1182(c)].

³⁶ Oakland City Council Resolution No. 63950, July 8, 1986. Exhibit #13.

³⁷ San Francisco Administrative Code Chapter 12H, sections 12H.1, 12H.2 and 12H.2-1 (as amended August 4, 1993). Exhibit #13.

³⁸ Manual of the Los Angeles Police Department, Volume 1, Section 390 (1992). Exhibit #13.

a person" and LAPD officers are prohibited from arresting or booking anyone for the crime of illegal entry into the United States (8 USC section 1325).³⁹

Currently, LAPD policy is to notify the INS only when, "an undocumented alien is booked for multiple misdemeanor offenses, a high grade misdemeanor or a felony offense, or has been previously arrested for a similar offense."⁴⁰ The LAPD policy is, therefore, to avoid contacting the INS if a suspected alien is involved in any other offense. The LAPD is currently being sued by several organizations that claim the LAPD has violated previous court rulings and the LAPD's policy by cooperating too closely with the INS. According to the Los Angeles City Attorney's office, the goal of the organizations bringing this lawsuit is to make Los Angeles effectively a sanctuary city.

In California, local jurisdictions that adopted such non-cooperation laws or policies were supported by a 1984 opinion by then-California Attorney General John Van De Kamp that stated:

There is no general affirmative legal duty in the sense of a legally enforceable obligation incumbent on peace officers and judges in California to report to INS knowledge that they might have persons who entered the United States by violating United States Code Section 1325. . . .⁴¹

Recently, however, the specific question of whether local jurisdictions could adopt sanctuary or non-cooperation laws was addressed to the current California Attorney General. On November 2, 1992, California Attorney General Daniel E. Lungren concluded that the supremacy clause of the United States Constitution prohibited local jurisdictions from adopting such laws.⁴² Moreover, on October 4, 1993, California enacted a statute prohibiting local jurisdictions from preventing law enforcement officers from identifying and reporting to the INS any person suspected of violating the civil provisions of the Federal immigration laws. However, this statute only applies in cases of a person arrested and booked for alleged commission of a felony.⁴³ Thus, the statute apparently would permit local jurisdictions to continue non-cooperation with the INS with regard to all other illegal aliens (such as those charged with or convicted of misdemeanors or those without criminal records, so-called "administrative violators"), where sanctioning or non-cooperation laws continue to exist.

Non-cooperation provisions are not limited to California. A Chicago Executive Order dated April 25, 1989 prohibits city officials from investigating or assisting "in the investigation of the citizenship or residency status of any person unless such inquiry or investigation is required by statute, ordinance, Federal regulation or court decision."⁴⁴ This order appears to effectively prohibit local law enforcement authorities from voluntarily cooperating with the INS in a broad range of activities.

A New York City Executive Order adopted on August 7, 1989 prohibits city officials from transmitting information regarding any alien to Federal authorities unless required by law to do so or unless the alien is suspected of engaging in criminal activity. However, the order also specifically instructs law enforcement agencies to continue to cooperate with Federal authorities, stating, "Enforcement agencies, including the Police Department and the Department of Corrections, shall continue to cooperate with Federal authorities in investigating and apprehending aliens suspected of criminal activity."⁴⁵ According to the INS, however, this order still inhibits cooperation from New York City officials regarding administrative violators.

While enforcement of immigration laws is generally a Federal responsibility and enforcement of criminal laws is generally a State and local responsibility, clearly the two are not mutually exclusive domains. In the current debate regarding U.S. immigration laws, many States and local jurisdictions have been highly critical of what they see as the Federal Government's inability to effectively police our Nation's borders, resulting in a massive influx of criminal aliens. Yet, by adopting non-cooperation laws, local jurisdictions are making effective governmental response to the problem of criminal aliens substantially more difficult.

Non-cooperation by Foreign Governments

³⁹Ibid, Volume 4, Section 264.50. Exhibit #13.

⁴⁰Gates v. Superior Court of Los Angeles County, et al., 193 Cal. App. 3d 205, 211; 238 Cal. Rptr. 592, 595 (Ct. App. CA, 2d App. Dist., Div. 3, June 30, 1987).

⁴¹Opinion of John Van De Kamp, Attorney General, State of California, No. 93-902, July 24, 1984, Volume 67, p. 340.

⁴²Opinion of Daniel E. Lungren, Attorney General, State of California, No. 92-607, November 2, 1992, p. 1. Exhibit #14.

⁴³California Government Code Chapter 818, Section 53069.75.

⁴⁴Executive Order 89-6, Mayor Richard M. Daley, City of Chicago, April 25, 1989, section 3, p. 3. Exhibit #13.

⁴⁵"City Policy Concerning Aliens," Executive Order No. 124, Mayor Edward I. Koch, City of New York, August 7, 1989. section 2. Exhibit #13.

After a criminal alien has been ordered deported one of the final steps in the process before deportation can be effected is to secure documentation from the country receiving the deportee. Such documentation is typically secured by INS Detention and Deportation Officers through a given country's U.S. embassy or consulate.

INS personnel from several district offices have told staff that several countries are less than cooperative with regard to securing documentation. The country most often cited as a problem in this regard is Nigeria. Jamaica appears to be the second biggest problem country.

At Oakdale, Federal Detention Center, out of a population of 811 there were 33 Nigerians and 99 Jamaicans on October 6, 1993. Oakdale Federal Correctional Institute has 101 Nigerians and 61 Jamaicans out of the INS population of approximately 614. These numbers do not include Nigerians and Jamaicans who are in county jails in the area near Oakdale. Both are backlogged—INS has deported only 54 Jamaicans and 56 Nigerians since January 1993. Staff learned on its visit to Oakdale that the large backlog of Nigerians and Jamaicans causes serious security problems. In fact, in order to alleviate some of these problems, some Nigerians are currently being housed, at additional costs, in Louisiana County jails.

INS personnel on numerous occasions in widely dispersed geographic areas informed staff that Nigerians and Jamaican consular officers were uncooperative in supplying the necessary travel documentation.

Under the Immigration and Nationality Act, the Attorney General has the authority to notify the Secretary of State of any country which, "upon request denies or unduly delays acceptance of the return of any alien who is a national, citizen, subject, or resident thereof. . . ."⁴⁶ Upon such notification, the Secretary of State in turn is to instruct consular officers in the offending country to discontinue the issuance of immigrant visas to nationals, citizens, subjects or residents of the offending country. Apparently, neither the Attorney General nor the Secretary of State has ever invoked these procedures except with respect to certain communist countries during the cold war period.

Recommendations

1. Congress should radically simplify the deportation process. Consideration should be given to eliminating distinctions among aggravated and non-aggravated felons at least for non-resident aliens. INS employees often have difficulty in making these distinctions.
2. Congress should consider eliminating or restricting Section 212(c) and other avenues of relief from deportation for criminal aliens.
3. Consideration should be given to establishing the principle that deportation appeals of criminal aliens will be pursued after deportation has taken place.
4. Congress should consider requiring all aggravated felons be detained pending deportation. Such a step may be necessary because of the high rate of no-shows for those criminal aliens released on bond.
5. Congress should require sanctioning local governments that adopt official policies of non-cooperation with INS.
6. The Attorney General should notify the Secretary of State of those countries which deny or delay the acceptance of the return of a criminal alien and consideration should be given to limiting issuance of U.S. visas in such countries.
7. INS should develop and institute a fingerprint based identification and a Nationwide record keeping system for criminal aliens.
8. INS should end the policy of issuing work authorization permits to criminal aliens contesting their deportation.
9. INS should end the 72 hour notice policy for deporting criminal aliens.

Senator ROTH. Mr. Levin, you mention that there already is a law on the books which would require the consul generals in foreign countries to stop issuing immigrant visas to national citizens, subjects, or residents of that country where there is not cooperation on those aliens that we attempt to deport to those countries. Do we know at this stage why the Justice Department or the State Department have never invoked these procedures?

Mr. LEVIN. No, Senator. We have inquired and we have been told that there are negotiations ongoing with several countries to try to improve that process.

⁴⁶ INA Section 243 (g); [8 U.S.C. 1253 (g)].

Mr. LORD. I can add, Senator, that I think this statute was invoked during the Cold War against such countries as the former Soviet Union, Cuba and the former Czechoslovakia. It has not been invoked during the post-Cold War against problem countries such as Nigeria and Jamaica, to our knowledge.

Senator ROTH. Well, I would like to suggest that we follow through and try to determine why those agencies are not utilizing this law, as it does appear to provide one means of enforcement.

Mr. Lord, you testified that criminal aliens often seek relief from deportation. How do they go about doing this?

Mr. LORD. Well, Senator, to start the process, the INS has to first initiate deportation proceedings against a criminal alien. At any stage along the deportation process, criminal aliens can seek relief. As I mentioned, one of the avenues of relief is under section 212(c) of the INA. Another is a section that basically lets the alien come before an immigration judge and say, well, it wouldn't be fair to send me back to my country because my freedom or safety might be endangered. And if the judge grants that, the alien would not be deported.

The alien can also seek asylum at any time during the deportation process. The deportation process is somewhat laborious in itself and a criminal alien could theoretically work through that process to a certain stage, think that he is going to be deported and then claim asylum at that time the alien gets kicked over into the asylum process, which we all know is laborious in and of itself.

Senator ROTH. How long can it take to deport a convicted criminal alien if the alien takes advantage of all their procedural rights under current law?

Mr. LORD. It can easily take several years, or more, if one seeks political asylum.

Senator ROTH. You have testified that some criminal aliens you have interviewed have repeatedly returned to the U.S. after having been deported. Do we have any figures as to how common this practice is?

Mr. LORD. We weren't able to find hard facts on that, Senator, because I don't think they exist. What we did do, however, is contact many of the INS districts to ask them if they could tell us about aliens that had been deported multiple times, and I should say that the INS cooperated fully with the Subcommittee. They supplied us with the information that we asked for.

For instance, the Los Angeles district, which has an especially big problem in this area—were asked if they could give us a list of people who had been deported several times. They sent us a list of 150 people within a couple of days. They said it was no problem to come up with a list like that.

Some of the people on this list have been deported six or seven times and they keep coming back. Some of the witnesses that will testify next will tell you that they have been deported several times and they kept coming back. Another interesting thing that we learned was one of the criminal aliens who we interviewed, Mr. Catalan, was at one point deported from the Donovan State Prison to the Mexican border with six other criminal aliens. They were physically put in the van, taken to the Mexican border and dropped off.

We asked him if he was planning to come back and he said he was, and he in fact came back the next day. We asked him about the other six criminal aliens and he said they were all planning to come back. They just waited until nightfall and tried to come across the border.

Senator ROTH. Now, am I correct in understanding that when they are returned to whatever country they came from, at U.S. expense?

Mr. LORD. It is at U.S. expense, yes, Senator.

Senator ROTH. So what benefit do we get out of it if we just send them back to their country and they turn around and come right back here?

Mr. LORD. Well, Senator, we get very little benefit if they return immediately or later because then they, in a large percentage of the cases, return to the criminal justice system.

Senator ROTH. Now, there are some pretty tough penalties, as I understand it. What is it, 15 years, if one illegally reenters this country?

Mr. LORD. Exactly.

Senator ROTH. Why hasn't that acted as a deterrent?

Mr. LORD. Well, Senator, on the books, you can get 15 years for reentry after deportation, but the problem is very few people get any type of a steep sentence for reentry. In fact, some U.S. attorneys' offices are so overwhelmed with this problem that they are unable or unwilling to charge criminal aliens with reentry after deportation unless they have been deported two or three times and convicted of several felonies.

We have also found that, as you can ask some of the criminal aliens who are going to testify next, that they have been charged with reentry after deportation, but they have been sentenced to 6 months, 12 months, or the charge was dropped in a plea bargain. So at this time, the stiff sentence isn't being handed out.

Senator ROTH. Now, as I understand it, Congress amended the law a few years ago to require that aggravated felons be detained, but it appears that many aggravated felons are nevertheless released on bond and then they fail to appear for their deportation hearings or flee after being ordered deported. Why is this?

Mr. LORD. Well, actually, the 1990 Immigration Act had a provision which required that all aggravated felons be detained. The only way the aggravated felon could be released is if the aggravated felon was a permanent resident alien, did not pose a threat to society, and was not a threat of skipping bond or fleeing.

Unfortunately, there was a 1991 Technical Amendments Act to the Immigration Act of 1990 that changed the law to allow the INS to release not just permanent residents, but any alien, including aggravated felons, who had entered this country legally. For example, if you came in on a student visa and overstayed that visa and you were here illegally, you came in legally. If you came across the border with a border-crossing card even though you are not a permanent resident, you came over legally, although you probably quickly became illegal. So, the law was changed by this technical amendment which, in our opinion, severely weakened the intent that Congress originally had in 1990.

Senator ROTH. Now, you said that the INS records system is inadequate. What specific information did you seek from the INS during the course of your investigation that it was unable to provide?

Mr. LORD. We were most interested in finding two pieces of information. We wanted to get a better sense of the number of criminal aliens out there, the number of criminal aliens in the prison systems, on probation or on parole. We were unable to find that information, so we had to go with the best data we had and make estimates and calculations. We were also unable to determine how many INS detainees there are on criminal aliens in the prisons and jails. We wanted to know how many aliens the INS was currently monitoring in the correction systems. They were unable to tell us that.

Senator ROTH. Now, you mentioned that INS provides work permits to convicted criminal aliens while their appeals are pending. Why is there that practice?

Mr. LORD. Quite simply, I think it is because under the law those criminal aliens are eligible for work permits and so they apply for them. The INS has to do its job, the other half of its job, its service side, and supply the work permit if the criminal alien qualifies for one.

Senator ROTH. Would we want to change that law? Would you recommend that law be changed?

Mr. LORD. I think staff would make that recommendation, Senator. We have heard a great deal of frustration from INS agents who have to aggressively try to prosecute and deport these criminal aliens, yet turn around and give them work permits and let them out on the streets at the same time.

Senator ROTH. If you are going to recommend changing that, what alternatives would you recommend?

Mr. LORD. Well, one suggestion that we have heard is that criminal aliens could be allowed to pursue their appeals in the country where they are citizens.

Senator ROTH. How would that work out?

Mr. LORD. Well, the criminal alien would be ordered deported and if the criminal alien chose to exercise an appeal, the criminal alien would be physically deported. The criminal alien would then be able to file appeal papers and litigate an appeal from their country, not while they are in this country with a work permit.

Senator ROTH. During your investigation, what did you observe to be the level of morale among INS investigators and border patrol agents who deal on a day-to-day basis with criminal aliens?

Mr. LORD. Well, we saw a great deal of frustration, as I mentioned, such as the INS agent who was giving out work permits and at the same time trying to find and prosecute criminal aliens. He was very frustrated. Many were frustrated because they knew that they had worked very hard to get an order to show cause and to deport certain criminal aliens, only to have those criminal aliens abscond at the last minute and they didn't have the resources or the time to go after them, so all their work was wasted.

Also, the fact that criminal aliens keep returning, that there is a revolving door among some criminal aliens, frustrates agents a

great deal because they are doing their job to prosecute them and deport them only to see them return within a couple of weeks.

Senator ROTH. Now, you mention the complexity of some of the laws and the procedures regarding criminal aliens. Do you have any suggestions as to how the laws might be simplified?

Mr. LORD. Yes. For example, as I mentioned earlier in my testimony, one type of criminal alien who is deportable are those who commit crimes of moral turpitude. The definition of moral turpitude is from the 1800's and it is one that lawyers and law enforcement are sometimes confused by. It is not defined in the Immigration and Nationality Act, and for some State offenses it changes from State to State.

So, basically, except for some very common crimes such as murder, the INS agent or law enforcement has to do research to figure out whether or not the criminal alien has, in fact, committed a crime of moral turpitude and there is a great deal of uncertainty. Aggravated felonies—although that is defined, it is also difficult to determine who is an aggravated felon. You have to open the statute book and look through several sections to figure out if someone qualifies.

We would probably recommend some type of a simplification—all felons who are sentenced to over 1 year, something like that—instead of having these different aggravated felon, moral turpitude type definitions.

Senator ROTH. Mr. Levin, you discussed the problems that are presented by local jurisdictions who have policies of not cooperating with the INS. Why is that important? The Federal Government is responsible for enforcement of the immigration laws. The States and local governments are not. Why is it important that we have cooperation?

Mr. LEVIN. Senator, you are right. The Federal Government has primary responsibility for enforcing the Federal immigration laws, but as we mentioned, with all law enforcement issues cooperation among Federal, State and local law enforcement agencies is often the key to effective law enforcement.

When you are looking at the problem of criminal aliens, local jurisdictions are involved in day-to-day law enforcement efforts, and therefore they are often in the best position to actually identify persons who may be unlawfully present in the United States. Therefore, this lack of cooperation makes the INS' job that much harder.

Senator ROTH. It is a question of not having information that already is available to local and State authorities. Is that the principle?

Mr. LEVIN. Exactly. That is the crux of this issue.

Senator ROTH. Now, you mentioned that these laws creating so-called sanctuaries or whatever take place in those major cities that are having the most serious problems with illegal aliens. In one sense, that seems somewhat inconsistent. What sparks these sanctuary laws? Who is trying to promote that approach, and why?

Mr. LEVIN. Generally, the primary reason that is given is to encourage or attempt to encourage cooperation within alien communities primarily with law enforcement. The one thing that I will point out, though, is that most communities seem to be able to op-

erate effectively without such refuge or sanctuary or non-cooperation laws, but that is the primary reason that is given.

Senator ROTH. Now, there is a question as to the validity of those laws. What effort, if any, has been made to determine the validity of these so-called sanctuary laws?

Mr. LEVIN. That question, Senator, was presented to the California Attorney General. He was asked to issue an opinion on the question of whether local jurisdictions could adopt such laws and his opinion stated that a local jurisdiction may not prohibit its officials from cooperating with the INS, and this opinion was founded on the Supremacy Clause of the U.S. Constitution.

The Supreme Court has held that, quote, "The Supremacy Clause requires the invalidation of any State legislation that burdens or conflicts in any manner with any Federal laws." The California Attorney General determined that local non-cooperation laws do stand as an obstacle to Congress' intent with regard to the immigration laws.

Senator ROTH. Well, the fact is that notwithstanding the decision of the attorney general, they are still on the books and being adhered to in some part. Isn't that correct?

Mr. LEVIN. Subsequent to the issuance of the opinion by the California Attorney General, the California State Legislature passed a statute that I referred to earlier. Now, that State statute is limited to people who have been booked and arrested for allegedly committing a felony, but the State legislature did respond to the attorney general's opinion. When you look at the State law, however, it leaves open large groups of aliens, including those who have been charged or convicted of misdemeanors, as well as administrative violators, who still may be covered by such non-cooperation policies.

Senator ROTH. What do you mean by administrative violators?

Mr. LEVIN. These are aliens who have not committed any crime, but nonetheless are unlawfully present within the United States.

Senator ROTH. Have any of these sanctuary or non-cooperation laws been challenged in court, to your knowledge?

Mr. LEVIN. No, not to my knowledge.

Senator ROTH. Well, thank you, gentlemen, for your testimony. It is very helpful.

Our next panel of witnesses are three criminal aliens. Each of the witnesses are non-U.S. citizens who have committed crimes in this country who have been previously deported. All came back to the U.S. and are currently incarcerated here.

Mr. Simons, Mr. Verdugo and Mr. Ellis, would you come forward, please? Gentlemen, I would ask that each of you stand and raise your right hand. Under the rules, you have to swear to the accuracy of your statements.

Do you swear the testimony you give before the Subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. SIMONS. I do.

Mr. ELLIS. I do.

Mr. VERDUGO. I do.

Senator ROTH. Please be seated. Now, I understand that each of you have a brief statement. We will start first with Mr. Simons from Canada, then move on to Mr. Verdugo from Mexico and fi-

nally finish with Mr. Ellis from Jamaica. So, Mr. Simons, would you please give your statement?

TESTIMONY OF RICHARD WELLINGTON SIMONS, CRIMINAL ALIEN

Mr. SIMONS. Good morning, ladies and gentlemen. My name is Richard Wellington Simons. I am a Canadian citizen. I am 26 years old. My permanent residence is Fort Erie, Ontario. I entered the U.S. illegally in 1986 and 1989 and 1991. I have been convicted of several felony crimes in the U.S. I was deported in 1988 and again in 1990. After both deportations, I came back. I was just ordered deported a third time.

I first illegally entered the U.S. in 1986. I came across the bridge at Buffalo, New York. I hitched rides to Philadelphia, Pennsylvania. I supported myself by exercising horses. When I started to use cocaine, I ran low on money. I cashed some bad checks in Harrisburg, Pennsylvania, and started to steal stuff. I was convicted of forgery and theft in February 1988 and I served 4 months in the Dauphin County jail.

I never hid the fact from jail staff that I was a Canadian. In fact, when they admitted me, I told them I was born in Canada. No one from the INS ever came to speak with me. When they released me, I went back to Middletown, Pennsylvania, where my friends lived and I was quickly arrested on forgery charges by police there. I was eventually convicted of forgery and I got 5 to 10 months with the State. I served my sentence and was deported the first time in late 1988. I walked across the border from New York to Montreal. I stayed in Fort Erie for a couple of months. During that time, I entered the U.S. illegally lots of times by riding across the border with friends to go drinking at night in American bars.

After a couple of months in Canada, I returned to Pennsylvania. That was in early 1989. I hitched a ride across the border and took a bus back to Pennsylvania. I worked at the Philadelphia race track for a while. Then I traveled up and down the East Coast with people from the race track. I never had to use fake I.D., but I did use aliases and gave fake social security numbers.

I was arrested several times in late 1989 for stolen property and theft. When they arrested me in Maryland for theft, I gave an alias and they released me on bond. I skipped out on the bond and went back to Pennsylvania, but they identified me in Pennsylvania when track people there turned me in to the police for criminal trespass. Police ran my prints and found out I had skipped out on a bond.

I was convicted in February of 1990 of theft, and the Feds convicted me a couple of months later for illegal reentry after deportation. They gave me 11 to 23 months for the theft and 6 months for illegal reentry. I was deported the second time in 1990 at Champlain, New York. I returned again to the U.S. about 2 months later through Buffalo and I was quickly arrested for theft, battery, possession of marijuana and possession of imitation CDs.

I was convicted on the forgery charge and illegal reentry and received 27 months from the Feds. I just completed serving my time and I am going to stand trial in Maryland for a theft charge. I was already ordered deported for the third time by an immigration judge.

I promise you that I do not intend to come back again. The penalty for illegal reentry if I return a third time is going to be too stiff. You know, if you look at the time I got for the crimes I committed while in the U.S., I probably didn't serve that much extra time for returning illegally.

Thank you.

Senator ROTH. Mr. Ellis, would you give your statement, please?

TESTIMONY OF DONOVAN ELLIS, CRIMINAL ALIEN

Mr. ELLIS. Good morning, ladies and gentlemen. My name is Donovan Dean Joseph Ellis. I am a citizen of Jamaica. Yet, I have spent most of my life in the United States. I first came to the United States in 1965 on a student visa, but returned to Jamaica several years later. I then returned to the U.S. in 1979 and have been here ever since. I first got into trouble with the law in 1980 and have since been arrested about 50 times. I was deported once in 1985 and returned 2 weeks later under a different name.

I am willing to answer any questions. Thank you.

Senator ROTH. Mr. Verdugo?

TESTIMONY OF LUIS UMBERTO VERDUGO, CRIMINAL ALIEN

Mr. VERDUGO. Good morning, ladies and gentlemen. My name is Luis Verdugo, a native and citizen of Mexico, born in San Philippe, Baja California, Mexico, on December 31, 1960. I entered the United States with my parents—

Senator ROTH. Would you pull the microphone closer and speak up? It is hard to hear you.

Mr. VERDUGO. Yes, sir. Thank you. I am Luis Umberto Verdugo, a native and citizen of Mexico, born in San Philippe, Baja California, Mexico, on December 31, 1960. I entered the United States with my parents on February 23, 1973. I attended high school in California until I was 17 years old. After dropping out of high school, I attended two trade schools and learned construction skills.

I have been arrested about 20 times since 1980. From 1982 to 1985, I have used three different aliases. In 1980, I started hanging around with people who used drugs. I also began using drugs. I was first arrested and convicted of a gun offense in 1980 and spent 2 weeks in jail and was fined \$300 dollars and released.

Between 1980 and 1985, I was convicted 7 times for various offenses. In 1985, I was convicted of armed robbery and spent 6 years in California State prison. While I was in prison, the INS placed a hold on me so that I could be taken to proceedings and deportation. I was interviewed by an INS agent. This was the first time the INS had ever come in contact with me. When I finished my sentence in 1991, the INS did not pick me up, so the prison released me. I did not hear from the INS after being released.

I then started reporting to my parole agents and tried to reenter society. During the end of 1991 or the beginning of 1992, I moved to Florida for a job. Things didn't work out and I reverted to criminality and I was arrested and convicted for burglary. I served 11 months in Florida and I was extradited back to California to serve time for violating parole.

On June 6, 1993, the INS served a warrant for deportation proceedings and I was taken into custody. The INS is now trying to

deport me and I am trying to defend myself and fighting deportation because I don't think that it is fair and just.

Thank you.

Senator ROTH. Mr. Simons, we will start with you. Now, you stated you have been deported three times.

Mr. SIMONS. Yes, sir.

Senator ROTH. Approximately how many times have you been arrested and charged in the U.S.?

Mr. SIMONS. I think 11 times, sir.

Senator ROTH. Now, you have stated that one time you were arrested and posted a bond. Were you subjected to the charge of re-entry after being deported at that time?

Mr. SIMONS. Yes, sir.

Senator ROTH. What was the result of that charge?

Mr. SIMONS. I am going through with it right now, sir, in Howard County, Maryland.

Senator ROTH. Would you bring the microphone closer?

Mr. SIMONS. I am going through with that charge right now. That is what I am here in Maryland for now.

Senator ROTH. It is being dealt with at the current time?

Mr. SIMONS. Yes.

Senator ROTH. Now, your INS file shows that you have used false names and given false social security numbers many times. Would you tell us how many different names you have used?

Mr. SIMONS. I think it is about 7 to 10 names, sir.

Senator ROTH. Is it common for people arrested for crimes to use false names?

Mr. SIMONS. Yes, sir.

Senator ROTH. How do they establish that? What do you do to supply a false name?

Mr. SIMONS. I just make up a name, I guess, and a social security number.

Senator ROTH. How do you get your social security number?

Mr. SIMONS. Just make it up.

Senator ROTH. You just give a false number?

Mr. SIMONS. Yes, sir.

Senator ROTH. Now, you were also subject to deportation for illegal reentry when you traveled back and forth into Buffalo with your friends. Did you have any concerns that you might get caught and punished?

Mr. SIMONS. No, sir.

Senator ROTH. You had no concerns?

Mr. SIMONS. No, because I wasn't driving the car. Usually, when you don't drive the car and you go through immigration to the United States from Canada, they usually check the driver and they don't really check the passengers.

Senator ROTH. Now, you also stated that when you served time in a county jail in Pennsylvania, you were never questioned by anyone from the INS, although you told the jail staff that you were born in Canada. Were you at that time subject to deportation?

Mr. SIMONS. Yes, sir.

Senator ROTH. Did the INS ever come to see you?

Mr. SIMONS. No, sir.

Senator ROTH. Never made any investigation whatsoever?

Mr. SIMONS. No, sir.

Senator ROTH. Now, you have been convicted and spent time in many jails and prisons with other criminal aliens. Could you tell us approximately how many criminals you have known who avoided deportation through some failure either by corrections staff to identify them or because a detainer expired?

Mr. SIMONS. About three or four, sir.

Senator ROTH. About three or four, to your personal knowledge?

Mr. SIMONS. Yes, sir.

Senator ROTH. Do you have any Canadian friends living illegally in America at this time?

Mr. SIMONS. Yes, sir.

Senator ROTH. How many?

Mr. SIMONS. Numerous.

Senator ROTH. Could you give any estimate?

Mr. SIMONS. 20, 30.

Senator ROTH. Have any of them been previously deported?

Mr. SIMONS. No, sir, not to my knowledge anyway.

Senator ROTH. Have Canadian friends of yours committed criminal acts while in the U.S.?

Mr. SIMONS. Yes, sir.

Senator ROTH. And what kind of crimes have they been?

Mr. SIMONS. Petty crimes, theft, unauthorized use of motor vehicles.

Senator ROTH. Drugs?

Mr. SIMONS. Yes, sir.

Senator ROTH. Mr. Ellis, is it true that you are now serving a 17-year sentence for narcotics trafficking?

Mr. ELLIS. Yes, sir.

Senator ROTH. And how many people did you have working for you before your last arrest?

Mr. ELLIS. About 42.

Senator ROTH. About 42?

Mr. ELLIS. Yes, sir.

Senator ROTH. Now, what kind of drugs were you and your group selling?

Mr. ELLIS. I sell crack cocaine, sir.

Senator ROTH. You said in your opening statement that you have been arrested some 50 times. Approximately how many times have you been convicted of crimes in this country?

Mr. ELLIS. The majority, all the time, sir. It is so many convictions I got, Senator, I just—I don't know. It is too many, sir.

Senator ROTH. So you can't really give a number because there were so many?

Mr. ELLIS. Definitely, sir.

Senator ROTH. What kinds of convictions?

Mr. ELLIS. Drugs, shooting in an occupied dwelling, strong-arm robbery, battery on a law enforcement officer, possession of—

Senator ROTH. Armed robbery?

Mr. ELLIS. No, no, no, I never been—yes, I got an armed robbery charge, yes, sir, definitely, but I haven't been convicted yet. I still got that case pending, sir; yes, sir.

Senator ROTH. Mr. Ellis, your record indicates that you have used 26 different names—

Mr. ELLIS. Aliases, yes, sir.

Senator ROTH [continuing]. Since you have been in the United States. That is true?

Mr. ELLIS. Definitely, sir.

Senator ROTH. Is it common for a criminal alien such as yourself to use many names?

Mr. ELLIS. Yes, sir, it is so easy.

Senator ROTH. What do you mean, it is so easy?

Mr. ELLIS. All you have to do is just give a name. I don't get a social security number because if you give a wrong social security number, then the name won't counteract with the number. So I just don't remember my social security number. I just give a name.

Senator ROTH. And nobody asks any further questions?

Mr. ELLIS. No. If you don't remember your social security number, that is it.

Senator ROTH. What is the purpose of using many names?

Mr. ELLIS. That is the only way, like suppose I got out on a Milton Moore discharge. I just got busted 2 days ago and another police knocked me off about 4 days from that time when I just got knocked off. Then I give a different name. Probably, I give Donovan Ellis.

Senator ROTH. It confuses the police?

Mr. ELLIS. Definitely, sir.

Senator ROTH. Now, you testified you got into trouble in 1980. I assume you were arrested for a crime at that time?

Mr. ELLIS. Yes, sir, in New York.

Senator ROTH. In New York?

Mr. ELLIS. Yes, sir.

Senator ROTH. What was the offense you were convicted of?

Mr. ELLIS. Possession of a firearm, possession of drugs, possession of marijuana.

Senator ROTH. What kind of firearm?

Mr. ELLIS. It was a .380 Beretta.

Senator ROTH. Were you ordered deported by the INS for that conviction?

Mr. ELLIS. Definitely, sir.

Senator ROTH. Were you actually deported?

Mr. ELLIS. They deported me back there in 1980 in Brooklyn, New York, but I didn't go home, sir.

Senator ROTH. You did not go home?

Mr. ELLIS. No, sir.

Senator ROTH. Why not?

Mr. ELLIS. I was cooperating with the government then, sir.

Senator ROTH. Is that the New York Police you were cooperating with?

Mr. ELLIS. Yes, sir; yes, sir. His name was Detective Cashey and Mr. Copeland from the homicide precinct.

Senator ROTH. Is it true that in 1983 you were arrested in Connecticut and spent several weeks in a Connecticut jail in 1983?

Mr. ELLIS. Yes, sir, definitely.

Senator ROTH. I gather there was an outstanding order of deportation on you. Was the INS, the Immigration and Naturalization Service, aware that you had left New York?

Mr. ELLIS. Yes, sir; yes, sir; yes, sir, because they came to the—the jail official told me that they had a hold on me from New York, and he said if they don't come in such-and-such a time, they would release me.

Senator ROTH. Did the INS pick you up and deport you?

Mr. ELLIS. No, sir, they didn't come pick me up.

Senator ROTH. So you were released before they showed up?

Mr. ELLIS. Definitely, sir.

Senator ROTH. Now, Mr. Ellis, is it true that in 1985, after serving a sentence in a Florida State prison, you were deported to Jamaica?

Mr. ELLIS. Yes, yes, yes, Senator.

Senator ROTH. And how soon after you were deported to Jamaica did you return to the United States?

Mr. ELLIS. Two weeks.

Senator ROTH. Just 2 weeks?

Mr. ELLIS. Two weeks, sir; yes, sir.

Senator ROTH. How did you return to the U.S.?

Mr. ELLIS. Well, all you need to travel to the United States is just three pieces of documents, which is social security, a picture I.D. and a voter registration. That is it.

Senator ROTH. Were they false?

Mr. ELLIS. Yes, sir, definitely. That was under the name Milton Maurice Moore, sir.

Senator ROTH. Now, how did you establish the false identification?

Mr. ELLIS. I got here in 1983 when I came to Florida. A dude gave it to me. He gave me his social security and the voter registration, and I went down to the driver's license place and got me a picture I.D. with that.

Senator ROTH. Who was the person that gave it to you?

Mr. ELLIS. Milton Maurice Moore, the dude with that name.

Senator ROTH. Was he in the business of supplying such false identification?

Mr. ELLIS. No, sir. He was on crack and he wanted some money, so I gave him \$100.

Senator ROTH. Was this his identification?

Mr. ELLIS. Definitely, sir; yes, sir.

Senator ROTH. Mr. Ellis, are you aware of other criminal aliens like yourself who have been deported and returned to the U.S.?

Mr. ELLIS. Definitely, a lot, sir.

Senator ROTH. Lots of them?

Mr. ELLIS. Definitely.

Senator ROTH. So your experience is pretty common?

Mr. ELLIS. Yes, sir. It is easy to come to America.

Senator ROTH. Are you familiar with a Jamaican known as Junior Wilson?

Mr. ELLIS. That is who just came back.

Senator ROTH. He just came back after getting—

Mr. ELLIS. He just came back. I spoke to him on the telephone.

Senator ROTH. [continuing]. After being deported?

Mr. ELLIS. Yes, sir.

Senator ROTH. And what is his—

Mr. ELLIS. Well, they say he is the leader of the Shadow Posse. They sentenced him and gave him 8½ years—that Jamaican gang when they came out with that Operation Rum Punch for the Jamaican Shadow Posse, the gang.

Senator ROTH. So he is sort of head of a criminal gang. Is that what you are saying?

Mr. ELLIS. Yes, sir.

Senator ROTH. Was he a major Jamaican drug trafficker?

Mr. ELLIS. And a murderer, too.

Senator ROTH. And a murderer, too. Do you know where Junior Wilson is today?

Mr. ELLIS. Brooklyn, New York. I spoke to him on the phone.

Senator ROTH. Back in New York, you spoke to him?

Mr. ELLIS. Yes, sir; yes, sir.

Senator ROTH. When did he return?

Mr. ELLIS. About 6 months now.

Senator ROTH. Mr. Ellis, I understand you also spent time in Canada. Have you ever been deported from Canada?

Mr. ELLIS. A lot of times, sir, yes, sir.

Senator ROTH. How many times?

Mr. ELLIS. About 4 or more, out of Toronto.

Senator ROTH. All right. Thank you, Mr. Ellis.

Mr. ELLIS. Thank you, sir.

Senator ROTH. Mr. Verdugo, if you pull the microphone and speak right into it, that will help.

Mr. VERDUGO. Yes, sir.

Senator ROTH. How many names have you used other than your own?

Mr. VERDUGO. I used two, Your Honor, and one of them was accidentally used.

Senator ROTH. One of them was what?

Mr. VERDUGO. Accidentally. I had the papers of my brother-in-law and the officer thought that it was me because he had a warrant, so I just went along with it. I told him, all right.

Senator ROTH. But you have used several different names?

Mr. VERDUGO. I used two of them.

Senator ROTH. Why would you do that?

Mr. VERDUGO. I had warrants.

Senator ROTH. You wanted to confuse the police. Is that it?

Mr. VERDUGO. Yes.

Senator ROTH. Now, in your statement you said that you have been arrested about 20 times and convicted 7 times. Is that correct?

Mr. VERDUGO. That is correct, sir.

Senator ROTH. Have you ever been deported?

Mr. VERDUGO. No, no.

Senator ROTH. Have you ever been investigated by the INS?

Mr. VERDUGO. Not until 1986.

Senator ROTH. What did they do in 1986?

Mr. VERDUGO. They just took—he wanted my green card number, but I didn't have it. I didn't remember it.

Senator ROTH. You said you were arrested about 20 times and convicted. What were you convicted of?

Mr. VERDUGO. I was arrested about 20 times, but not all of them were convictions. Looking at the papers, I seen that I had 7 convictions out of the 20 arrests. Many of them didn't have dispositions because of lack of evidence or mistakes that the law made and didn't fall in the category of—

Senator ROTH. What was the nature of the convictions?

Mr. VERDUGO. From petty theft—

Senator ROTH. What?

Mr. VERDUGO. Petty thefts, grand theft auto, possession of a firearm, shooting a firearm, receiving stolen property, armed robbery, such things as those.

Senator ROTH. You were charged with armed robbery?

Mr. VERDUGO. I suffered those convictions, the ones I just mentioned.

Senator ROTH. You were actually convicted of armed robbery?

Mr. VERDUGO. Yes, yes.

Senator ROTH. Mr. Verdugo, you said that the INS placed a detainer on you, but did not pick you up. Can you tell us what happened?

Mr. VERDUGO. I am not too familiar with the law, nor the INS law, but I finished my sentence and the correctional officer said that Immigration will come pick me up because I did have a detainer for 6 years. But at the last day of my sentence, they said that Immigration wasn't picking me up, so they had no choice but to release me.

Senator ROTH. Now, in your statement at the beginning you said you felt the deportation was unfair and you were going to fight it. Why do you think it is unfair?

Mr. VERDUGO. That is at the end of my statement, sir.

Senator ROTH. Yes.

Mr. VERDUGO. And I think it is unfair because I served time for my crimes, for the crimes I committed, and I think that under the Fourteenth Amendment, which is equal rights for the people in the United States—OK, I paid the time for the crime I did and now INS wants to get a hold of me and take me through a whole process, place a bond on me again, take me to court again, being held, and then suffer not another conviction, but just like a conviction if they are going to take my papers away and send me to Mexico.

Senator ROTH. You are what we would call a criminal alien. You are not a citizen of this country, are you not?

Mr. VERDUGO. Well, yes, I am a criminal alien, or was, I should say.

Senator ROTH. Let me ask you this question. If you were returned to Mexico, would it be difficult, in your judgment, to return to this country?

Mr. VERDUGO. To return to this country?

Senator ROTH. Yes.

Mr. VERDUGO. Well, if I were deported, I think if the INS judge can place like 2 years—I don't know how to say it, but they don't want you in 2 years. They say you cannot apply in 2 years, you cannot apply in 5 years or 15 or 20, and so on. I would think that I would try to apply as soon as possible because here is where I got my family.

Senator ROTH. How difficult is it for individuals to come in from Mexico illegally?

Mr. VERDUGO. I wouldn't know how to answer that, sir.

Senator ROTH. That is all the questions we have. I thank you gentlemen for being here today.

Mr. VERDUGO. Thank you.

Mr. ELLIS. Senator, can I say something?

Senator ROTH. Yes, Mr. Ellis.

Mr. ELLIS. Yes, sir. I want to ask you just—the dude's name that I called, Junior Wilson, sir, OK—I want to know if this is going to be on television, sir, because I got 5 kids on the streets and I got a family and these people is dangerous criminals, sir, OK? And if he heard—if they see me on the TV calling his name, then my family's life is in jeopardy. Also, my life is in jeopardy.

You see, I don't mind I am coming on the television, but I don't want that man's name to be mentioned on the television because he know the only person who is going to say is me because he know I speak to him on the telephone and he see me on the TV.

Senator ROTH. Well, you can discuss that with the staff afterwards. Of course, as you know, what is done by the media is a matter for their determination.

You are all excused.

Mr. VERDUGO. Thank you.

Mr. ELLIS. OK, sir.

Senator ROTH. This concludes the hearing for today. We will meet again on Tuesday, November 16, at 2:15 p.m. when we will hear from the INS Commissioner.

The Subcommittee is in recess.

[Whereupon, at 10:35 a.m., the Subcommittee was adjourned.]

CRIMINAL ALIENS IN THE UNITED STATES

TUESDAY, NOVEMBER 16, 1993

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:18 p.m., in room SD-342, Dirksen Senate Office Building, Hon. William V. Roth, Jr. presiding.

Present: Senators Roth and Cohen.

Staff Present: Mary D. Robertson, Chief Clerk; Harold B. Lippman, Investigator; Daniel F. Rinzel, Minority Chief Counsel; Wm. Leighton Lord III, Minority Counsel; Carla J. Martin, Minority Assistant Chief Clerk; Peter L. Nacci, Detailee, Bureau of Prisons; Paul Feeny, Senator McCain; John Wagsler, Senator Sasser; Peter Evanovich, Senator Cohen; and Paulina Collins, Senator Cohen.

OPENING STATEMENT OF SENATOR ROTH

Senator ROTH. The Chairman of the Subcommittee unfortunately will not be able to be with us because of other commitments.

This afternoon the Subcommittee is, of course, holding its second day of hearings on the criminal alien problem. Last week, on November 10, the Subcommittee heard testimony from the staff as well as testimony from three criminal alien witnesses. That testimony chronicled a repetitive cycle of crime, apprehension, adjudication, deportation, reentry and more crime.

Last week's testimony exposed flaws at every point in the current process for dealing with criminal aliens, from apprehension to removal. We need to keep in mind that criminal aliens have already been found guilty of a criminal act under the stringent due process requirements which our laws and Constitution extend to both citizens and aliens. How much more process is due?

Moreover, the Immigration and Naturalization Service, charged with the responsibility for deporting criminal aliens, is not well organized to do so. Given the large numbers of criminal aliens estimated to exist, INS may well lack the necessary resources to meet the challenge. I think a much better case could be made on that point if INS first got its own management house in order.

Antiquated computer systems, unreliable records, overlapping jurisdictions and a devotion to statistics rather than real results are only a few of the problems identified in last week's hearing. The testimony of three criminal aliens revealed how the INS records

system is fooled by the use of multiple names, by employing fake identification papers to confuse the INS.

These witnesses explained that they would quickly reenter the U.S. following deportation because reentry is so easy, detection unlikely, and prosecution for illegal reentry uncommon in some jurisdictions along the border. The difficulties confronting the INS are compounded by the refusal of some local governments to cooperate with INS through their adoption of local non-cooperation laws, declaring these cities sanctuaries for illegal aliens.

At the same time, officials of some of these cities complain that the Federal Government is failing to police our borders to prevent the entry of illegal aliens. That seems, to me, hypocritical. My amendment to the crime bill, which withholds funds authorized under that bill from communities which adhere to policies of non-cooperation, should send a wake up call to these communities.

Today we will hear from INS Commissioner Doris Meissner concerning the priorities and goals for the INS criminal aliens program. Commissioner Meissner has not been at her job very long and we appreciate her willingness to speak today about this important subject. She is accompanied by the assistant commissioner for investigation, John Shaw and the associate commissioner for enforcement, Gil Kleinknecht.

Also today we will hear testimony from Jere Armstrong, assistant chief immigration judge of the Executive Office of Immigration Review. He will be accompanied by Judge Thomas Fong, an immigration judge from L.A. The Executive Office of Immigration Review is responsible for conducting deportation hearings for criminal aliens.

I want to thank the staff of the Chairman and the Chairman himself for his cooperation and assistance during the course of this investigation.

Senator Cohen, do you have an opening statement?

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. I will be very brief, Mr. Acting Chairman. I was not able to attend the prior hearing but, on reading the record of the state of affairs, the INS program for the deportation of criminal aliens reminds me of the revolving door.

We frequently talk about members of Congress and members of the Executive Branch going through a revolving door from government to the private sector to government again. However, the revolving door, when it comes to the criminal alien program, is worthy of a feature on Saturday Night Live.

I have read through the story of this one individual from the Dominican Republic. He was apprehended and deported in 1977. At some point prior to 1980, he reentered the United States and proceeded to commit a series of serious crimes. He was again arrested, convicted, and incarcerated. Upon his release, he was neither detained nor deported by the INS. He was not prosecuted for reentry, even though he had reentered after deportation in violation of Federal law.

Over 10 years, he used a minimum of 10 aliases and five dates of birth to evade the INS. Then in 1988 he was apprehended in Puerto Rico and deported a second time. The INS officials were not

aware of his earlier deportation because he used an alias. He reentered the United States after this second deportation and committed additional crimes.

His criminal activity spanned 16 years and he is now finally being prosecuted for reentry after deportation. This case is probably not unique. I think it probably reflects of the state of affairs in the INS.

I think Senator Roth is quite correct to point out that the finger of fault can be pointed in many directions. On the one hand is the INS recordkeeping itself, such as the reliance upon names, dates of birth and Social Security numbers as a means of identifying criminal aliens. Mr. Chairman, I attended a function last spring with President Clinton and Vice President Gore in Baltimore. At this function, there was a sort of celebration of the break-throughs that we can make with the use of technology in fighting crime.

I recall seeing one demonstration of a product that Westinghouse, I think, had produced. This product was a small computer in a police car that could match up a suspect's fingerprints instantaneously with fingerprints on a data file. It seems to me that we have to move away from the kind of recordkeeping the INS has used in the past and make use of available technology. That is something that is going to require dollars.

I might also say, Congress also bears some of the responsibility because it has not provided some of the resources necessary for the INS to upgrade its recordkeeping system.

I think that your amendment this past week also indicates another complicating factor. Some States do not cooperate with the INS. Happily, this will not occur if the Roth amendment, which tells States either they are going to cooperate or they are going to lose Federal crimefighting money, becomes a permanent part of the Omnibus Crime Bill.

So today's hearing is going to be very important. I look forward to hearing the commissioner's recommendations as to how we can, on a wholesale basis, reinvent this process. We must regain control of our deportation system, so we do not have criminal aliens who come in and out of this country committing serious crimes without anyone really knowing who or where they are.

I will stop there, Mr. Chairman, and look forward to the witnesses' testimony. I ask that my prepared statement by inserted in the record.¹

SENATOR ROTH. Thank you, Senator Cohen. I strongly agree what we are talking about today, in many ways, is bringing our Immigration and Naturalization Services into the 21st century.

I would like to welcome our commissioner. As I said, Commissioner Meissner has only been in the position for 1 month. We know how busy you must be, and I would like to thank you for your willingness to appear before the Subcommittee today. I should point out, however, that despite the newness of her current position, Commissioner Meissner has had a great deal of experience with the tough immigration issues that confront the INS.

She comes to her new position after 7 years as senior associate director of the Immigration Policy Project at the Carnegie Endow-

¹The prepared statement of Senator Cohen appears on page 71.

ment for International Peace. Before that she held several positions within the INS itself, including executive associate commissioner and acting commissioner. She has also held positions in the Department of Justice, including that of deputy associate attorney general and assistant director of the Office of Policy and Planning.

She enjoyed a reputation during her career with the Justice Department as a person of competence, intelligence and integrity. It is with a great deal of pleasure I welcome her here this afternoon, as well as her two associates, Mr. Shaw and Mr. Kleinknecht.

We have a rule in this Subcommittee that all witnesses, including those from the executive department, will be sworn before they give any testimony. So would the three of you please rise and raise your right hand?

Do you swear the testimony you will give this Subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Ms. MEISSNER. I do.

Mr. SHAW. I do.

Mr. KLEINKNECHT. I do.

Senator ROTH. Thank you. Please be seated. Commissioner Meissner, in accordance with our custom, we will include your full statement as if read and we look forward to hearing now your remarks.

TESTIMONY OF DORIS M. MEISSNER, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE; ACCCOMPANIED BY JOHN SHAW, ASSISTANT COMMISSIONER FOR INVESTIGATION; AND GIL KLEINKNECHT, ASSOCIATE COMMISSIONER FOR ENFORCEMENT.

Ms. MEISSNER. Thank you very much. Thank you for your kind words and for the constructive tone that surrounds this hearing.

The Attorney General and the Administration, almost from their entry into office, recognized the dimensions and the seriousness of the criminal alien problem. The problem was illustrated by the organized smuggling of boatloads of Chinese illegal aliens to the United States. We saw them on our TV screens last spring.

These smuggling episodes represent an organized criminal enterprise carried out by street level gang members utilizing extortion, intimidation, and violence to carry out a lucrative smuggling trade that penetrated, among other landing sites, 4 major port cities of the United States.

Attorney General Janet Reno was among the first to recognize that the problem of dealing with criminal aliens goes well beyond the capacity of the Federal Government alone to address. Rather, it calls for the combined efforts of Federal, State and local governments to formulate a truly meaningful response. The Department of Justice and the Immigration and Naturalization Service (INS) have begun to organize a national agenda to harness the collective perspectives and expertise of officials from all levels of Government. Together, we will address the issues surrounding criminal alien activity and formulate a balanced collaborative response to the problems we identify.

As a first step, the Administration has responded to the organized smuggling of Chinese aliens by introducing legislative rem-

edies to tighten our asylum laws, through streamlining administrative exclusion procedures and by proposing substantial increases in the penalties for organized alien smuggling. In addition, these legislative proposals include enhanced enforcement authorities, such as increased penalties for alien smuggling from 5 to 20 years.

To deal with the escalating problem of alien crime, the INS has undertaken a series of enforcement initiatives. Proactively, these include participating in the Organized Crime Drug Enforcement Task Force, which targets complex narcotics trafficking organizations, the establishment of the Violent Gang Task Force, which focuses on criminal alien gangs, and participation in the Organized Crime and Racketeering Strike Force, which investigates complex organized crime cases involving both traditional and emerging organized criminal groups.

Specific INS initiatives include conception of the Five State Criminal Alien Program which focuses INS investigative and trial attorney resources on the States having the highest populations of criminal alien inmates and establishment with the Executive Office for Immigration Review of the Institutional Hearing Program which provides for expedited administrative hearings at certain State and Federal correctional facilities while incarcerated aliens are still serving their sentences.

Today, administrative hearings are held at 77 institutional hearing facilities throughout the country in 7 Federal and 68 State correctional facilities, as well as 2 county jails.

In addition to raising the stakes considerably for alien smuggling ventures, the Administration has also recognized the burdensome presence of alien criminals incarcerated disproportionately in our Federal and State correctional populations. In response to a provision of the Immigration Act of 1990, the INS surveyed Federal and State correctional authorities and determined that over 57,000 foreign-born nationals were serving sentences in these combined penitentiaries. However, there are no precise measures of the extent of criminal alien activity in our society, only enumerations of crimes of foreign-born nationals recorded in diverse criminal justice systems.

Under current law it is important to differentiate between citizens who are foreign-born and aliens. Our lack of information about criminal alien felons in our prison systems reflects the problem of addressing the phenomenon of criminal alien activity in the United States.

The first step, therefore, in coming to terms with criminal alien activity is to define in statistically reliable and precise terms the true dimensions of the problem and provide a systemic response that combines the resource capabilities of all affected government entities, Federal, State and local.

For the INS this process has already begun. We are planning major systems automation initiatives to counter criminal alien activity by providing a service-wide capability for positive identification, automated case tracking, and management reporting as well as information sharing with other Federal, State and local entities.

INS plans to implement an automated case tracking and reporting system that is based upon a re-engineered enforcement process flow which will eliminate many labor intensive report writing ac-

tivities and simplify data collection processes. This allows our officers to focus more time on actual enforcement and less on paperwork. The case tracking system will also automate case correlation, search for specific open or closed cases investigated at various INS locations and create statistical reporting and performance measurements.

We are in the process of defining a service-wide standard on positive identification using biometric data such as fingerprint, hand geometry or facial recognition. In the developmental effort, INS will maintain compatibility with the FBI's Nationwide automation effort. INS then plans to implement positive identification systems throughout the INS for all types of encounters with a person, including arrest, detention, deportation, exclusion, request for asylum and benefits applications that may have been granted. INS already uses the National Crime Information Center to highlight criminal aliens not in custody in which we have a high level of interest.

In this fiscal year, the INS will begin the initial stages of opening the National Criminal Alien Tracking Center. This is a center that will be staffed 24 hours a day, 7 days a week by INS officers to respond to criminal alien inquiries and verification requests from other Federal, State or local law enforcement agencies. INS will expand its cooperative initiatives with other law enforcement agencies for electronically exchanging or extracting criminal alien information from other law enforcement data bases.

Finally, as an outgrowth of our efforts to implement reform of the political asylum decision system, we are making a detailed review of the deportation removal system overall. This effort will be complete in about 6 months and will result in a range of procedural and administrative reforms that are required to improve our effectiveness where return is concerned.

In summary, in the face of increasing operational challenges, we will aggressively explore and utilize information systems technology and other strategies and cooperative efforts to augment our human resources in order to effectively enforce immigration laws.

Thank you very much, and I will now try to answer your questions.

PREPARED STATEMENT OF DORIS MEISSNER

Mr. Chairman and distinguished Members of the Committee:

I am pleased to have this opportunity to appear before you today on behalf of the Immigration and Naturalization Service (INS) to testify on the Service's programs and proposed legislation designed to address the criminal alien problem in the United States.

We are gratified to know that the members of this Subcommittee share our concern about aliens who commit serious crimes within our borders. Our goal is simple: identify, locate, and remove criminal aliens expeditiously.

During the last decade, we have seen a sharp rise in the involvement of aliens in criminal activities nationwide. In response, the INS has strengthened efforts to identify, apprehend and remove criminal aliens from the United States. The removal of criminal aliens is a high priority for INS law enforcement efforts.

In Fiscal Year (FY) 1993, the INS conducted 46,707 individual criminal alien investigations that resulted in the initiation of expulsion proceedings. During the same period of time, nationwide, 98 investigations targeting organized criminal alien groups were completed. Formal deportations of criminal aliens increased to 19,199 in fiscal year 1993, up from 18,375 in fiscal year 1992 and 13,196 in fiscal year 1991.

To deal with the increasing number of criminal aliens in the United States, the INS has developed a Criminal Alien Strategy. The goals of the INS Criminal Alien Strategy are:

(1) To systematically identify, locate, and initiate removal proceedings against criminal aliens, whether or not incarcerated;

(2) To ensure expeditious removal of convicted criminal aliens, consistent with statutory and regulatory requirements; and

(3) To create an effective deterrent against aliens seeking entry into the United States to engage in crime.

In order to accomplish these goals, the INS has implemented the Alien Criminal Apprehension Program (ACAP). ACAP has been underway since 1986, and is both proactive and reactive. The program pursues the systematic detection and arrest of criminal aliens within the United States, both before and after incarceration.

STATE AND LOCAL COOPERATION WITH INS

Proactive Programs

The INS's proactive operations involve close cooperation between the Service and other law enforcement and criminal justice agencies. Since 1987, the INS has participated in the Organized Crime Drug Enforcement Task Force (OCDETF). One of the goals of the OCDETF program is to identify criminal aliens involved in narcotics trafficking who are not yet incarcerated. Through OCDETF, the INS works cooperatively with other law enforcement agencies that target major drug organizations. The INS brings its unique statutory authority and expertise in dealing with diverse ethnic groups to this multi-agency effort that disrupts organizations involved in drug trafficking and related crimes of violence.

In accordance with the Anti-Drug Abuse Act of 1988, the INS increased its commitment to OCDETF during fiscal year 1991 through establishment of the OCDETF Pilot Project. Under the pilot project, the INS offices in Houston, Los Angeles, Miami and New York, assist Federal, State, and local law enforcement entities in investigating narcotics trafficking and violent crimes involving aliens. These cities have also been designated by the Office of National Drug Control Policy as high intensity drug trafficking areas.

Through OCDETF, INS Senior Special Agents participate in task force operations along with other Federal, State, and local drug enforcement agencies, targeting organizations comprised of or controlled by foreign nationals. The last decade has witnessed a dramatic rise in organized criminal activity carried out by foreign nationals, warranting a strong response by the INS.

During fiscal year 1993, through OCDETF the INS conducted 445 investigations, which resulted in the:

- arrest of 2,377 aliens
- deportation of 532 aliens from the United States and the seizure of:
 - several tons each of cocaine and marijuana
 - large quantities of heroin
 - nearly 700 firearms
 - \$83,904,936 in U.S. currency
 - 116 properties
 - 581 vehicles
 - 1 aircraft
 - 9 boats

The INS also participates in the Organized Crime and Racketeering Strike Forces of the Department of Justice, in an effort to identify and apprehend criminal aliens not yet incarcerated. Under the authority of the Department of Justice, officers investigate complex organized crime cases involving traditional and emerging ethnic organized crime groups. Through these investigations, INS identifies aliens actively involved in criminal activity.

In addition, in response to the Department of Justice's initiative against brutal street crimes, the Attorney General directed INS to establish the Violent Gang Task Force (VGTTF) on May 1, 1992. Its purpose is to engage in proactive, interagency, multi-jurisdictional law enforcement operations against criminal alien gangs and gang-related activities which will result in the disruption and dismantling of such gangs and the removal of their members and associates from the United States.

During fiscal year 1993, the following VGTTF-related arrests and seizures were reported:

- 142,223 aliens (470 aggravated felons) arrested
- 219 criminal aliens prosecuted; 186 convicted

- \$84,860,000 in narcotics seized
- \$7,721,000 in U.S. currency, vehicles, and property seized
- 566 firearms seized

In 1986, the INS also formally began working with the Federal Bureau of Investigations (FBI) in identifying and coordinating areas of responsibility in the event an alien commits an act of terrorism. This joint venture enables both agencies to share information which ultimately could render an alien excludable and/or deportable from the United States.

In addition, together with the International Association of Chiefs of Police (IACP), the INS has developed a training program that will assist local law enforcement officers to understand the laws within INS' jurisdiction and increase interaction between agencies. Beginning with the first training session held in Chicago, Illinois, in 1991, this training has been funded by Bureau of Justice Assistance grants. Since then, nine (9) other cities have been provided with this invaluable training.

Additionally, as another effort to remove criminal aliens from the United States, the INS now has the capability of placing select deportation warrants into the National Crime Information Center (NCIC). These systems automate the exchange of information on criminal aliens between the INS and State and local criminal justice agencies. Because a large number of criminal aliens encountered by the INS are not incarcerated in a penal institution and the INS has limited detention space, emphasis is placed on identifying and arresting aliens who have been ordered deported but are still at large in the community. Since December 1, 1991, 291 aliens have been apprehended through by local police officers through routine NCIC enforcement checks.

Reactive Programs

The Immigration Reform and Control Act of 1986 and the Anti-Drug Abuse Act of 1988 contain provisions dealing with the expeditious removal of criminal aliens from the United States. In response, the INS and the Executive Office for Immigration Review (EOIR) began in 1986 to concentrate staff resources on a program in which deportation hearings would be held in Federal and State correctional institutions.

The INS has established a presence at certain State correctional intake facilities for easier identification of incarcerated criminal aliens and an Institutional Hearing Program (IHP) for expedited administrative hearings at certain State facilities. The IHP, a cooperative effort of the INS, the EOIR and correctional agencies, enables deportation proceedings for aggravated felons and other criminal aliens to begin while they are still serving their sentences. This process has the potential to reduce Federal detention costs by ensuring, in many cases, expeditious removal upon the completion of the alien's sentence.

Within the Federal correctional system, the INS has implemented an agreement with the Bureau of Prisons (BOP) to consolidate all male prisoners with generally at least 6 months left to serve (except Cubans, Mexicans and high security aliens) who are deportable aliens, at the Federal Correctional Institution at Oakdale, Louisiana (FCI Oakdale). This enables the INS to initiate deportation hearings and remove criminal aliens from the United States upon completion of their Federal sentences. This facility currently houses more than 600 convicted alien felons who previously were dispersed throughout the BOP facilities nationwide. There are five other Federal locations where deportation hearings are conducted.

Since 1989, 3,144 criminal aliens have been deported from FCI Oakdale. Administrative hearings have been or are currently being held at 77 IHPs located across the country in 7 BOP¹ and 68 State correctional facilities, and 2 county jails. Further improvement and expansion of existing sites is presently being discussed with the BOP, the EOIR and the INS.

Removal of criminal aliens within the IHP process begins with the identification by the INS, with the assistance of local law enforcement and State prison officials, of criminal aliens in the State correctional system. An INS officer conducts interviews to determine if the aliens meet criteria which make them amenable to deportation proceedings.

Once an alien is identified as subject to deportation proceedings, the INS officer prepares the case for deportation proceedings. Cases are then filed with the EOIR.

As part of the effort to identify and process criminal aliens in State correctional systems, the INS has initiated a Five State Criminal Alien Program. This program

¹This number includes two IHPs at Leavenworth, but does not include deportation hearings held at Oakdale II.

focuses limited INS investigative and trial attorney resources on the States having the highest concentration of criminal aliens.

Through discussions and agreements between the INS and the EOIR, the Five State Model proposes cooperative efforts with State criminal justice agencies to screen for deportation the approximately 43,000 foreign-born inmates in State correctional facilities in California, New York, Texas, Florida and Illinois. Full implementation of this program will continue to expedite the identification process, to determine at the earliest time possible when a foreign-born inmate enters the State penal system, and to facilitate administrative review proceedings by centralizing alien prisoners into fewer institutions. Eventually, it is hoped that standardized approaches and improvements in the processing of criminal aliens developed in the Five State Program can be expanded to all jurisdictions.

The INS also accepts custody of, and detains, criminal aliens who have finished their sentences without the completion of administrative hearings. The INS detains criminal aliens at INS Service Processing Centers, contract facilities, joint BOP/INS facilities, and State and local jails. The INS has approximately 5,900 bed spaces available to detain aliens, and approximately 60 percent of this bed space is utilized for the detention of criminal aliens. In 1990, the Federal Detention Center, Oakdale (FDC Oakdale) opened as a facility to house criminal aliens who have been released from State and local institutions after serving their criminal sentences. As the result of expulsion hearings held at FDC Oakdale, 3,428 criminal aliens have been deported from the United States.

A number of factors preclude the INS from directing all cases into the IHP. Many criminal aliens are unknown to the INS, even though convicted and incarcerated. Many of these aliens, although eligible for deportation, may also be incarcerated only for short periods of time in more than 4,500 State and local facilities across the United States. This makes it difficult for the INS to identify them and determine deportability during their period of incarceration. In other cases, the INS has difficulty locating and obtaining the certified records of conviction required to sustain deportation on criminal grounds, although we hope that with the implementation of the new regulation regarding admissible documents to prove a criminal conviction, this burden may be eased. Certain types of aliens are eligible for waivers of relief from deportation, even though they have been convicted of aggravated felonies. All of these factors contribute to administrative burdens and delays in the administrative deportation process. All are issues we are working to overcome in our efforts to achieve the greatest impact we can with our programs.

INS RECORD KEEPING SYSTEMS FOR CRIMINAL ALIENS

Enforce

The INS recognizes the need to automate and integrate many of the processes it currently employs to identify and track criminal aliens for eventual deportation. ENFORCE is an automated information system, presently under development, to support INS Service-wide case tracking and central reporting of management statistics. This automated process will allow INS field offices to access a common data base, and communicate with each other by computer, thus facilitating the tracking of criminal aliens by the INS.

The National Criminal Alien Tracking Center

Section 7343 of the Anti-Drug Abuse Act of 1988 (P.L. 100-690) and Section 242(a) of the Immigration and Nationality Act, as amended by the Immigration Act of 1990 (P.L. 101-649) mandated that the Attorney General make available to law enforcement agencies (LEAs) computer-based investigative resources of the INS, on a 24-hour, 7-day-a-week basis, to help identify suspect criminal aliens arrested for aggravated felonies.

The National Criminal Alien Tracking Center (NCATC) is the proposed INS response to those legislative mandates. The NCATC would serve as a highly visible interactive enforcement facility to support LEAs in addressing the serious problem, of criminal activity involving aliens. The interaction of the NCATC with LEAs would facilitate the processing of criminal aliens and the location and apprehension of INS abscondees/fugitives by coordinating the resources of the entire law enforcement community.

The NCATC would provide a *single point of contact* for all law enforcement criminal alien queries. This would reduce the need for after-hours coverage in multiple INS Investigations offices, while providing a uniform nationwide INS response capability to the law enforcement community. This capability would be particularly crucial in locations where INS has no enforcement office that can be contacted directly

by a police agency. Through the NCATC, INS field offices would receive NCATC query information, on a daily basis, specifically relating to their geographical area.

LEGISLATIVE CHANGES REGARDING DEPORTATION PROCEDURES FOR CRIMINAL ALIENS

The Service has proposed legislative changes regarding deportation procedures for criminal aliens. We believe that these measures, if enacted, would significantly streamline the deportation process from encounter to final removal of an alien.

(1) Reduce the period of time required from the service of an OSC to the initiation of the hearing and the time allowed for filing a petition for judicial review. This would minimize delays in the deportation process and detention expenses.

(2) Change current allowances of relief for aliens convicted of an aggravated felony or felonies and *sentenced* to five or more years of imprisonment. Currently, relief from deportation under Section 212(c) of the Immigration and Nationality Act is not available to an alien who has been convicted of an aggravated felony or felonies and has *served* at least 5 years of imprisonment.

(3) Prohibit the accrual of additional time to meet statutory residence requirements for administrative relief once an OSC has been served. This would discourage delaying tactics used by aliens attempting to qualify for administrative relief.

FOREIGN GOVERNMENT COOPERATION IN SECURING TRAVEL DOCUMENTS FOR DEPORTABLE CRIMINAL ALIENS

The INS has experienced a wide disparity in the degree of cooperation from foreign governments in the issuance of travel documents for deportable criminal aliens. Representatives of some foreign governments cooperate by traveling to Service Processing Centers to interview nationals of their countries and issue travel documents. However, others refuse to issue travel documents unless the deportable alien tells them that he or she wants to return to his or her country. Some refuse to issue travel documents even when a passport issued by their country is presented.

CONCLUSION

The INS is committed to enforcing our immigration laws to deter illegal alien entry and presence. We are grateful for the strong congressional support which we have received in this endeavor.

The INS believes that a strong partnership between the Federal Government, the States, and local jurisdictions is essential for effective immigration law enforcement. This is particularly true when dealing with criminal aliens and the impact these individuals have on State and Federal correctional systems. Again, the identification, location, and removal of criminal aliens from the United States continues to be a priority of the INS and is an issue that is being addressed at the local, State, and Federal levels.

Effective immigration enforcement also requires a balance among interior and border enforcement efforts to address such concerns as aliens working illegally in the United States; the use of fraudulent documents; sophisticated attempts at illegal entry; and the manipulation of the asylum process to obtain employment authorization. Border enforcement is very important to deter illegal entry, but it cannot, by itself, solve the Nation's immigration problems. Employer sanctions remain a vital and essential provision of our immigration law and national policy.

We intend to do all we can to meet these challenges. We seek your continuing support for our efforts.

I thank you for your attention and would be happy to answer any questions you may have.

SENATOR ROTH. Commissioner Meissner, you listed a number of things that you say the INS will undertake. When will these reforms actually take place? How quickly do you expect them to be accomplished?

MS. MEISSNER. There are a variety of timetables, of course, because some of the automation initiatives take longer or will take longer than some of the procedural ones. Where the deportation removal process is concerned, as I said, this is a follow up effort to our very thorough look at the asylum process. The effort is on a fast track. We hope in about 6 months to have a thorough set of procedural changes to put into practice.

Some of them will require regulations. Some may call for legislation and when we do have legislative proposals, we of course will bring them to the Congress.

The automation initiatives are in varying stages. The Alien Criminal Tracking Center, as I said, will be starting to be operational this year. Some of the other initiatives are in pilot phase right now and, of course, funding is always an issue. I am just beginning now to look at where our funds are invested and the automation agenda for the Service will be among the highest priorities that we have.

Senator ROTH. It was not clear from your testimony as to how you hope to address the problem of identifying the criminal aliens. As was indicated by Senator Cohen, fingerprinting appears to offer one means, one approach that has been quite successful in other areas. As I understand it, there has been a real problem identifying criminal aliens through name recognition because the criminal alien changes names and that creates problems.

Exactly how are you going to try to identify who and where the criminal aliens are?

Ms. MEISSNER. You are correct in pointing out the difficulty and the deficiency that exists with name-based systems. We agree and are very much committed to systems that work off of either fingerprints or other kinds of personal characteristics. But as you know the technology is at varying stages and the coordination among Federal agencies and State agencies is not what we would like it to be.

We have fingerprint systems in a test phase. I would have to give you, as a follow up, more specific information about when we will have a fingerprint based system in final operation.

Senator ROTH. One of the things that bothered me, and of course you just entered this position last month so it may be difficult for you to address it. If either of your associates want to, that would be fine.

Fingerprints for years, as long as I can remember—and that is quite a while—has been a pretty valid method of identifying people. I am mystified that here we are in 1993 and we are saying that we are beginning some studies. I am not being critical of you, but I am being critical of the agency. Why has this not been approached before? Why is it not a significant answer to this problem of identification? It shocks me when you say that there is not good cooperation.

I gather that is with the FBI, there is one case where we just began to get—

Ms. MEISSNER. I was not criticizing the cooperation, I was saying there are a variety of systems in place and they do not all talk to each other the way they should.

Senator ROTH. But I am being critical. My understanding is that there has not been the kind of cooperation in many of these areas that one would expect automatically. But I gather from what you say this has to be a whole new undertaking.

Ms. MEISSNER. I cannot address to what has not happened up until now and I do not know why some of it—

Senator ROTH. Could either of your associates?

Ms. MEISSNER. Mr. Kleinknecht may be able to help on where we are going.

Mr. KLEINKNECHT. A couple of things, Senator. Your first comment is true, but for purposes of INS, when we are processing an immigrant coming into the country, an alien, we need a response immediately. The fingerprint systems that are out there for State and local and that are managed by the FBI are fingerprint systems that takes hours to get a response back and sometimes days. So when you talk about fingerprints, yes, it is a positive means of identification. But the technology is not there today. The FBI does not have it. Nor do the States have a system where we can get instant responses for the millions of people that we deal with.

Senator ROTH. I would point out, Mr. Kleinknecht, the complaint is that we are not identifying them whatsoever. It is not a matter of minutes or hours or whatever, because we have a name identity system, that does not work. Maybe fingerprinting is not perfect, but I fail to see what substitutes are being offered.

Mr. KLEINKNECHT. We are working with fingerprints on the east coast. The seven western States had developed what they refer to as the WIN system where they put all their fingerprints in an automated system. Our San Diego sector and district, our Tucson sector and district and our other Border Patrol stations on the west coast have access to the WIN system. But we do not have similar systems in the other States.

We are cooperating with the State of Texas. What we are waiting for and working with is development of the FBI's AFIS.

Senator ROTH. When do you expect them to identify that?

Mr. KLEINKNECHT. I think the FBI is still out to contract with the specifications, getting bids back.

Senator ROTH. Do you have any idea if it is 6 months, a year, 2 years? If I recall the figures from the testimony we have had before this Subcommittee, the number of criminal aliens has gone up 8 times or something like that, a fantastic amount whatever the number is. And yet we are just beginning to make studies. I find that hard to understand.

Mr. KLEINKNECHT. When an alien comes through a port of entry, our inspector has 30 seconds to make a decision as to whether or not to allow that person into the country. The systems that are available and in place today that would cover all of INS, do not have the technology to give us a 30 second response, or in the case of a Border Patrol, a 20 minute response.

We are hoping that with the technology where the FBI has the lead, that we will piggyback on their system which brings all the 50 States into an AFIS system. We hope to be able to use that as a method of identifying, through the use of a single print, the aliens we are looking for and that that technology will give us the 30 second response.

Senator ROTH. Let me ask you this. You say there is a problem with the aliens who are entering the country, but what about developing some kind of central file on the criminal aliens that are already here?

Mr. KLEINKNECHT. That is what we would do with the AFIS and the INS single print file.

Senator ROTH. But that would not be a question of an hour or so. Is that information not available through the States and the prisons now?

Mr. KLEINKNECHT. Unfortunately, Senator, many of the States got ahead of the Federal Government on developing automated fingerprint systems, for example California.

Senator ROTH. That was my point. My understanding, for example, is California has what they call the AFIS computer system which is working?

Mr. KLEINKNECHT. And they are part of WIN, which are the several States on the west coast. So INS is working with that part of the country and using automation to identify criminals coming in through southern California, but there are not similar systems on the east coast.

Senator ROTH. As I said, I find it incomprehensible at this stage that we are just beginning studies. Let me go back to you, Commissioner Meissner. Last week the Subcommittee staff testified that the laws regarding deporting criminal aliens are too complex and should be simplified. I wonder if you agree with that statement, and if you do, what recommendations you would have as to making it simple?

Ms. MEISSNER. I cannot give you a final set of conclusions on whether I think the law is too complex because we are trying to look at that very systematically. I do know that there are a set of procedural streamlining changes that can be made and need to be made. I think that for the Executive Branch, certainly for the INS, the approach on this kind of a question always has to be what can we do within the ambit of our activities first? Then, what can be done in coordination with other Federal agencies? And then, what needs to be done legislatively to resolve issues?

I think the general feeling that we have in the INS is that there are a number of proposals that are now in the Crime Bill that would affect our ability to work with criminal aliens that would be very helpful. So we certainly hope that that bill passes. That will give us some tools.

Beyond that, I would like to look at what we should do internally with a particular emphasis on the points that you are making, such as automation and systems development, that would bring us into the modern age where we should be. Certainly where there are legislative solutions we will bring them to you.

Senator ROTH. Let me ask you this question, because I understand not all criminal aliens are deportable. Only those criminal aliens who commit so-called crimes of moral turpitude, aggravated felons with certain limitations are deportable. I find it somewhat confusing to understand these definitions and I have been told that is somewhat true among the INS personnel as well.

Would you agree with that? Do you think Congress should simplify the definitions for which criminal aliens can be deported?

Ms. MEISSNER. I am sorry, I am not in a position to give you a definitive answer about that. The aggravated felon definition is a fairly recent one. It is helpful to us because it eliminates certain forms of relief that have been time consuming where effective deportation has been concerned.

Whether there needs to be a new look at the whole category of crimes for which people should be deported, I am not sure. What I can tell you is that we will very aggressively be looking at those questions because it is very important to us, as I said in my opening statement, it is very important to the Attorney General that the Government be effective where criminals aliens are concerned.

So if reworking some of the statutes and clarifying some of the definitions would be useful, we will be prepared to make that recommendation. I am just not prepared to make it now.

Senator ROTH. Let me ask you this. A suggestion has been made that allowing criminal aliens to appeal their deportation from their home country might be an alternative to allowing a criminal alien to stay in the U.S. and work, pending their appeals. Do either you or your associates have any opinion or judgment on that approach?

Ms. MEISSNER. I think we are open to looking at that. It is a question that has come up in the past and there are some serious legal questions to look at. It is an area that would probably be litigated if the Congress passed such legislation.

I think, as I said earlier, it is something that ought to be on the table in looking at what tools are required to be effective, but I also think that it comes with some real risks that we have to look at carefully.

Senator ROTH. A suggestion has also been made with respect to the 7,000 correction facilities that are in existence and as to how INS can adequately monitor these facilities. Would you agree that many criminal aliens are released from State and local jails back out onto the streets before the INS ever learns of them?

Ms. MEISSNER. I do not know that we can say that because we do not know. What we do know is that people that are in jail for less than a year do not come to our attention and if the proportion of the inmate population in jail less than a year, includes a large proportion of criminal aliens, it is possible. I would not want to say that many are released without having a better idea of what the makeup of that population is.

Senator ROTH. But if I understand what you are saying, we really do not know which prisoners in the State and local Governments are criminal aliens? We have no information or very little information on that?

Ms. MEISSNER. We get lists from the States, as to the foreign-born people that are in their facilities. We go through these lists and they are the basis for the Institutional Hearing Program. I am going to ask Jack Shaw to amplify on this answer, but we do not put the Institutional Hearing Program into place for people that are serving for less than a year. It is not a population that we track.

Senator ROTH. Mr. Shaw?

Mr. SHAW. Congress passed the Immigration Act of 1990 and it contained a Section 507 which has represented a significant boost to the Immigration Service and its ability to identify and track convicted aliens moving through State criminal justice systems.

Section 507 of the law requires the States to submit through central records repositories, as grounds for receiving federally funded grants, lists of convicted felons in phase 1—and we are in phase 1 now—to INS district offices. Every INS district office has formu-

lated a memorandum of understanding with the States to receive these lists through central records repositories.

It is these lists that we then examine. The lists are for foreign-born nationals, and that is the closest the criminal justice systems at the State level can come to determining someone's alien status. We then cull through those lists and request certified records of convictions now furnished to INS free of cost. That becomes the basis for INS officers then to track the names of those individuals to the penitentiaries in which they are incarcerated, to interview them, make a determination of alien status and begin processing them for charges which are reflected in an order to show cause, and will ultimately lead to a hearing during that period of incarceration.

Phase 2 of that process would require the States to furnish INS conviction records on foreign-born national misdemeanors. Rather than overload the State's systems or our system at this point, it is the Phase 1 process that is currently in place.

All of this will be enhanced with automation efforts.

Senator ROTH. Let me ask you, out of the 7,000 different units involved in corrections in one manner or another, how many co-operate and supply information to INS?

Mr. SHAW. Virtually all State correction systems, virtually all. New York is the exception. We are in litigation in New York. I have a list here of every State that is currently furnishing records for phase 1.

Senator ROTH. Does that include local, city, county institutions or only State?

Mr. SHAW. Felons. For the most part, convicted felons, alien felons go into State penitentiary systems. We have not yet gotten down, except in two jurisdictions, to county jail systems. County jails, because of the spillover in State systems, because they have reached in many cases their capacity are assigning convicted felons in some instances to county jail systems. We have, in fact, established institutional hearings in two large county jail systems in the United States.

What you are getting at, I believe, Senator is once you subtract the 4,500 major correctional institutions which are basically county jails or penitentiaries, you are dealing then with probation and parole offices.

Senator ROTH. It is my understanding that something like 20,000 criminal aliens go through the Los Angeles County Jail each year, but relatively few of those are identified; is that correct?

Mr. SHAW. I would say that we have in place agents screening that population on a daily basis.

Senator ROTH. What percentage of those 20,000 are identified would you say? Do you have any idea?

Mr. SHAW. I believe that the system that we have in place is that every alien released from that facility is screened by INS for alien status. A small percentage are put on a fast track as aggravated felons. Those that we can get to. And there is a systematic screening process in place, so that if there is an alien in the Los Angeles County Jail with 6 months remaining on his sentence, 60 to 90 days I mean, those cases are selected out by INS for an institu-

tional hearing, for a deportation hearing, at that location. We do about 15 of those a week.

In addition, as an alien is released, as every prisoner has completed his sentence, we have a screening at the release point to make a determination of alien status. It does not mean that they are going to have a hearing or an order of deportation when they leave there, but the worst of those offenders will be referred into the INS district deportation process or they will take voluntary release and be immediately removed from the country.

So in answer to your question, I believe the Los Angeles district is effectively screening all prisoners suspected of being aliens, foreign-born nationals, at that facility. And there are 23,000 inmates in the facility.

Senator ROTH. We would like to come back to that, but in the meantime I will call on Senator Cohen.

Senator COHEN. Thank you very much, Mr. Chairman.

As I have been sitting here listening to the testimony, it reminds me of an article in the New York magazine I read several weeks ago. It concerned the crime situation in the city, as I recall, and it began with a recitation of the story of Ricky P. His last name was not identified.

It pointed out he was not a violent criminal, he was not a gun-toting vicious human being, did not have a Mac 10, did not have a Glock 9 millimeter, but was intent on committing a series of petty crimes, mostly shoplifting. What caught my particular attention in that article was that he had been convicted of 41 separate criminal activities, 40 misdemeanors and one felony.

This particular individual was arrested, in 1 day, three separate times. Each time he was given what they call a DAT, a desk appearance ticket, which means that you show up at such and such a time and we will process your case.

When he finally was apprehended a third or fourth time, he was brought before a judge. The judge suggested that if he pleaded guilty, he would receive 4 months. He decided to do a little forum shopping and said I will plead not guilty and take my chances with another judge. He got assigned to a different judge and he ended up getting 10 hours of community service. There is no indication he ever served the 10 hours.

The article went on to discuss the more serious aspects of crime in New York, where you have a city which has 5,000 murders every year, 500,000 serious felonies and a million crimes that go unreported. The statistics tend to mount up. So it seems that the system had become dysfunctional and Ricky P. was just another example of its dysfunctional aspect.

When I look at the numbers before the Subcommittee today I get the same reaction. This year in New York some 1,486 or some 87.7 percent of the criminal aliens issued deportation notices never showed up. Some 18,000 of the criminal aliens ordered deported since 1989 have never been deported. So the system seems to be dysfunctional from my perspective.

Some of that is due, in part, to the so-called 72-hour rule, namely that when criminal aliens are scheduled for deportation after being released from Federal or State prisons, they are often given to 72 hours to report for their actual deportation. Can you tell me what

the rationale is for continuing the 72-hour rule, which is known as the "72-hour run notice" within the industry?

Mr. SHAW. First of all, the immigration judges, and I will assume that they will be on some other panel today, make determinations of deportability and usually set the terms for the alien to leave the country. The 72-hour rule is a creature of regulation within the Immigration Service and can be changed.

Senator COHEN. Should it be changed?

Mr. SHAW. Pardon?

Senator COHEN. The question is should it be changed?

Mr. SHAW. I believe it should.

Senator COHEN. What do you think we should do?

Mr. SHAW. I believe we should. It creates a detention problem for us, that if every alien with a final order of deportation is turned over to the Service and required to be detained until he leaves the country during his period of appeal which may still be running, it has a substantial resource impact on us.

Senator COHEN. My understanding is you have got roughly 3,500 beds within the service to detain individuals, is that right?

Mr. SHAW. In Service processing facilities and additional contract space.

Senator COHEN. So detaining thousands of additional potential deportees would overload the system?

Mr. SHAW. Our capacity is presently taxed today with 60 percent of our space filled with alien felons pending their hearings. It would substantially impact our limited detention capability.

The reason for the rule, however, is intended to be humanitarian, not in the interest of a criminal alien, but to allow an alien who is being deported from the United States to close out his bank accounts, to terminate his business, to take care of final collection of wages. That is the purpose of the 72-hour rule.

Senator COHEN. How should we change it then? Now that we know that in New York this year 87.7 percent of the criminal aliens issued deportation notices never showed, what should we do with the 72-hour rule?

Mr. SHAW. I understand Mr. Kleinknecht may amplify on this a bit, but we are working aggressively. I think in the 1994 budget there are substantial funds for expanding INS' detention capability. In the 1994 budget planning year there are further increases pending review at the departmental level.

Obviously our ability to detain is directly related to our ability to remove. That goes for every alien who has received an order of deportation.

Senator COHEN. It seems to me you do not have much in the way of options. You can either increase the facilities to detain them, or you can modify the 72-hour rule. They do not need more than a few hours to get out of town.

Ms. MEISSNER. Or you can do a better job of identifying who the people are that are likely to not comply.

Senator COHEN. You have got 87 percent.

Ms. MEISSNER. Exactly. Who are those people, what profile do they have? How should we learn from the 87 percent in terms of the future ones? This is an example of the kind of procedural and

ultimately regulatory item that I was referring to. That needs a very, very close look.

Senator COHEN. I will pursue that a little bit later. My understanding is once a criminal alien has been ordered deported, certain documentation has to be received from the country to which he is being deported. Is that correct?

Ms. MEISSNER. That is correct.

Senator COHEN. The information is secured by the INS Detention and Deportation Offices through that other country's offices, and we have to use our embassy or consulate, right?

Ms. MEISSNER. Right.

Senator COHEN. I am told, and we talk about local cooperation, that there can be cases—quite a few cases—of lack of cooperation from those other countries to which we would be deporting the individuals, right?

Ms. MEISSNER. That is correct, yes.

Senator COHEN. My understanding also is that under the Immigration and Nationality Act, the Attorney General has the authority to notify the Secretary of State of any country that denies or delays acceptance of its nationals. In turn, the Secretary of State may instruct the consular offices in that country to discontinue issuing immigrant visas to the Nationals of that particular country. Is that right?

Ms. MEISSNER. That's right.

Senator COHEN. I am also told we have never exercised that authority except with respect to certain communist countries during the Cold War period.

Ms. MEISSNER. That is my understanding.

Senator COHEN. What is wrong?

Ms. MEISSNER. Obviously, that is a very extreme step to take.

Senator COHEN. Why is it extreme? If we tell our local States either you cooperate or you are going to lose money under the Omnibus Crime Bill, why should we not tell foreign countries that either you cooperate or we do not give you any more immigrant visas, period. When faced with this kind of lack of cooperation, you have to take, it seems to me, pretty extreme measures. If we are going to take it with our own States, let us take it with other countries.

Ms. MEISSNER. I am simply corroborating your view that it is my understanding that it has not been used. I think that in this area of criminal aliens, as well as in a number of other aspects of immigration enforcement and immigration policy, we have to review our stance on a variety of issues. The relationship with the State Department and the sanctions, as it were, that might be available to us in these areas where it is a very aggravated situation, we should definitely pursue.

However, before taking that kind of a step, we obviously want to do everything that we can to work with the country cooperatively and we have had cases—and some quite recently—of countries that have been recalcitrant and we have finally gotten cooperation without taking the step that you are calling for. I call it an extreme step because I think it should be a court of last resort.

Senator COHEN. One final point, Mr. Chairman. I am told there are about 450,000 aliens who have been either convicted of a crime and who are in prison, in jail, on probation or on parole. And by

comparison, the INS currently assigns a little more than 1,000 investigators to identify those aliens and initiate deportation proceedings when it is appropriate.

In other words, we have each INS investigator responsible for more than 400 criminal aliens. No way in the world, no matter what improvements you undertake, that you are going to be able to have that kind of a case load and manage it effectively or efficiently.

Ms. MEISSNER. We have to do the best we can with what we have. It is true we cannot, under the present circumstances, have the case ratios that would diminish that, but there are a whole set of things that we can do to target and to improve our effectiveness so that people are actually doing that work rather than paperwork. And that is what we are trying to do.

Senator COHEN. I think we may be setting you up for more hearings in the future with more criticism unless we change the ratio. Improving the INS's use of technology will help a great deal, but you cannot manage that kind of a case load with that few INS investigators.

Ms. MEISSNER. I think one point to make here, because you are raising a very important point, if you are going to have an effective immigration enforcement system, it has to be a balanced system. Traditionally the response, often in the Congress, certainly in the Executive Branch, where immigration enforcement has been concerned, has been to focus on the border. The border is important. The interior activities that we are responsible for are also important, and that has not been in balance the way it should be.

Senator COHEN. Thank you, very much.

Senator ROTH. Thank you, Senator Cohen. Mr. Rinzel has some follow up questions he would like to ask.

Mr. RINZEL. Thank you, Mr. Chairman.

Regarding the Los Angeles County Jail, the staff did have, during the course of the investigation, the opportunity to visit the Los Angeles County Jail. There is one study that was done a few years ago that estimated, based on interviews done by INS and the Los Angeles County authorities, 11 percent of the prisoners who went through that jail were criminal aliens. They have over 220,000 prisoners that go through that single local jail system each year.

I am wondering, based on Mr. Shaw's comments, if there is an assumption that most of the people who are in county jail systems must be misdemeanants and therefore not deportable criminal aliens, when based on that study it would suggest that there are a lot of aliens, who have prior felony convictions who get into trouble and end up going through the Los Angeles County Jail or some other county jail system, or at least meet the definition of criminal alien in the immigration laws. And also, it is my observation and understanding from speaking to INS staff there that they do not do a review of everyone who comes in that jail. They only do exit reviews. They only catch—by that time, those who are about to go out the door.

That they only put detainers on what is described—and this is a quote—"the worst of the worse"—so that there are likely to be at least thousands of criminal aliens that pass through that jail a few blocks away from INS district headquarters in Los Angeles and

no effort is made by the INS to even identify those people, much less detain or subject them to deportation proceedings.

Is my statement of what the facts are accurate, to your understanding?

Mr. SHAW. Up to a point, Mr. Rinzel. First of all, that facility has an inmate population, on any given day, of 23,000 people. It works from about 10—although I have not physically seen it—10 staging areas, 10 out locations. This presents a logistical problem for the INS with limited resources. We request that certain prisoners be brought 1 day a week to a particular location for an institutional hearing.

Recognizing the seriousness of the problems in the jail and the large proportion of alien inmates, that was the only county jail we have ever set up an institutional hearing in and brought a judge there. And the operators of that facility, the correctional authorities, provide us only 1 day a week. There are constraints or limitations on how many aliens we can hold hearings on in that facility while their sentences continue to run.

Mr. RINZEL. Well, we are going to hear from a judge later on who, in fact, does conduct hearings among other places in that program, but our observation and investigation indicated to us that in many days there are as few as six aliens who are presented to the immigration judge for hearing procedures there, that they are not in fact—it is not a question of being overworked, they very seldom spend more than a half day there at a time. They simply do not get the cases presented to them by INS in a timely enough fashion to even occupy a full day. That is what we were told in Los Angeles.

Mr. SHAW. I will certainly check into it, but according to my Assistant District Director for Investigations, we can present 15, if you will, quick track or clean cases a week. That means that once an alien is identified, we can complete the hearing prior to his release date, we can have a certified record of conviction, bring him into his hearing and put him through the process.

In addition, we are screening all inmates released from that facility to make whatever determination we can, remand them to the district office for a deportation hearing because he has completed his State sentence, or voluntarily remove him from the country, run buses down to the border for his removal.

Mr. RINZEL. Another interesting fact that we learned in Los Angeles was that there was one Superior Court judge, Los Angeles County Superior Court Judge Carter, I believe his name was who set up a program for identifying criminal aliens, who pass through his court. And he found, over the course of a year, that 35 percent of the defendants who appeared before him in the one Superior Court were, in fact, criminal aliens.

Those kinds of numbers suggest to us, although no one knows, that there is a much bigger problem out there than what INS or anyone else is aware of and that we are woefully behind in even trying to understand the scope of it, much less address it.

Mr. SHAW. Mr. Rinzel, that is what I thought I was getting to with reference to Section 507. Now in the Judge Carter case, during a specific pilot period we assigned agents to that courtroom. When the judge was imposing sentence he did not know whom was

standing before him specifically. He did not know his alien status. We knew it. When that person was convicted, placed on probation or parole, we took the appropriate action to schedule that person for an administrative hearing.

What you are doing though, in this case, is moving from penitentiary systems or correctional systems, where INS can try to identify the populations in those locations into a court system. In New York City alone there are 14 courts. So while I would agree in concept that we have to see how we can bring our resources to bear more effectively, the fact is if we move away from the penitentiary system where the worst of the worst are incarcerated and try to move at this point into probationers and parolees or into putting investigators into monitoring court dockets, it is beyond our capability or our capacity.

Mr. RINZEL. The only point I was trying to make was the scope of the problem, not whether you could do anything about it, given the research. The scope of the problem is a lot larger than what some people may have been led to believe.

Mr. KLEINKNECHT. But the numbers really do not reflect the problem we face in enforcing immigration law. You mentioned California, and we will agree California has the largest population of criminal aliens in their system. But you look at the Los Angeles jail and 12 percent of them are aliens.

But then you have to back out of that number those who may be eligible for relief. So the INS officer who has the background to determine which one of those have some sort of protection or relief. Then we look at which ones have at least two moral turpitude convictions. Then we look at whether they have an aggravated felony conviction. Then we look at if they have 60 more days left in their sentences so we can hold a hearing. So 11 percent does not mean 11 percent are immediately deportable, but that is the group that we have to interview to find who is eligible for deportation.

Keeping in mind that we have been in the Los Angeles jail for just 1 year, and we have made a lot of progress in that jail in 1 year, deporting about 11 a week, in just 1 day's hearing. If we have the capability to go to 2 days and 3 days, that number will increase. But we have a smaller group than the 12 percent that you mentioned to work with.

Senator ROTH. I guess the thing that is so bothersome is the growth of the problem. In 1980 there was something like 9,000 aliens in Federal and State prisons, today that figure is 53,000. That is a huge jump in that period of time. Aliens now account for over 25 percent of Federal prison inmates.

The thing that bothers me is I do not see us getting a handle on the problem. Let me ask you some different questions. Time is moving on so we are going to have to proceed.

As I understand it, the INS currently uses investigators who are highly trained and relatively high paid to monitor prisons for criminal aliens. In fact, the staff reported that some INS districts rotate their investigators in and out of the duty of prison monitoring because they are afraid that the investigators will be downgraded for doing work below their training and grade level.

Is this an efficient use of resources? Could INS assign lower grade deportation specialists to this task?

Ms. MEISSNER. The Immigration Service has felt for quite some time that it is not an efficient use of resources, that these issues lend themselves to a paraprofessional group. And finally, after quite some time and quite some struggle, the Office of Personnel Management and the Justice Department have approved a new position which is a paraprofessional position. I believe it's called an investigative agent. We will be implementing that intermediate stage. We are now ready to implement this new position.

This will be a 5-7-9 and it will be able to work with the kinds of cases that we are talking about in this hearing. We do not have funding for it during this fiscal year, so it is a next fiscal year initiative. But it is one of those things where we may have some flexibility this year, and to the extent that we can start to put it into place earlier, we will try to do so.

Senator ROTH. I understand that sometimes there is a lack of coordination between the Border Patrol and the INS district offices when it comes to dealing with criminal aliens. As I understand it, in the INS districts the chief Border Patrol agent and the INS district director do not answer to one another, even though the Border Patrol is part of INS. Are you familiar with this problem?

Ms. MEISSNER. This is an issue that has long antecedents, yes. A good part of the problem existed when we had anti-smuggling as a separate activity from investigations. That has now been organizationally resolved for some while and anti-smuggling is clearly part of the investigations program.

As to the districts and the Border Patrol sectors, there should not be a problem there and if it has existed in the past, it is something that has generally been worked out. There may be isolated cases that come up from time to time where there needs to be some refereeing. However, this whole question of consistency and coordination throughout the Service, and overall agreed upon set of priorities and initiatives that we should be carrying out, these of course are very much at the top of my list of concerns.

We have spent the last several weeks looking intensively at our organizational structure. We will be making some changes and some recommendations in the coming weeks, in order to get a structure in place that answers these points as effectively as we can.

Senator ROTH. Commissioner, we heard last week that the INS routinely issues work papers to criminal aliens who are appealing a deportation order. Why is that done and do you think it is a good policy as the new commissioner?

Ms. MEISSNER. I am afraid I do not know the answer to that. I have not had a chance to look at it. Do you want to answer that?

Mr. KLEINKNECHT. At first glance it does not sound right, but when you look at the practicality of not doing it, many of the criminal aliens that come before us have families and have jobs and if we would remove their ability to work during the process, they would not be able to take care of their families, fulfill their employment and other responsibilities. So when the District Director looks at those cases, he has to make an intelligent judgment of whether or not this alien—

Senator ROTH. But are these not convicted felons?

Mr. KLEINKNECHT. Yes, but they are not deportable at that point. He has to make the decision, does he bring them in and put them in custody and let their families fend for themselves, or does he make the decision that this person will probably show up, will not commit more crimes?

Senator ROTH. Are you putting the public at risk by letting them out?

Mr. KLEINKNECHT. Yes, but that occurs at all levels, whether it be the Federal Government or the State level. You put them out on probation or parole or put them out on bond. That is the system that we have.

Senator ROTH. But does that not call for an overhaul of the whole process? These are not U.S. citizens, are they?

Mr. KLEINKNECHT. It calls for a look at what discretion our District Directors have on issuing work permits and whether or not a family of the alien, that we have other means of taking care of the family should the alien be incarcerated.

Senator ROTH. How long does the process take, months or longer?

Mr. KLEINKNECHT. The process varies, depending on the willingness of the alien to voluntarily return—

Senator ROTH. What would you say is the average?

Mr. KLEINKNECHT. Senator, it could take up to a year to go through a deportation process when all the appeals are pursued and all the motions are heard and decided.

Senator ROTH. Is that length of time necessary—are there constitutional considerations?

Mr. KLEINKNECHT. I would not want to speak on the constitutionality of it, or whether it takes too long. I think the immigration judge who is appearing before you may be better equipped to handle that and to respond to it.

Mr. SHAW. Senator, if I may amplify on that a bit, a detained case, a detained criminal alien is given priority within the system of the Executive Office for Immigration Review. If an alien is not detained because we do not have the capacity and if a district director exercises discretion and grants work authorization, it is that case that may not be docketed or come before a hearing within a year. But the judgment on that release of that alien is, the criteria is is he a threat to the community? Is he likely to abscond? Those are the criteria applied.

If the answer to either of those is yes, he becomes a detained criminal alien.

Senator ROTH. Let me say, one INS agent told us that he spent 5 percent of his time looking for absconded aliens and 95 percent of his time issuing work permits. Let me ask you this, Commissioner.

The staff reported last week that INS officials are sometimes reluctant to transfer alien deportees to other districts which have detention space because the sending district could lose credit for that deportation. Are you aware of this problem?

Ms. MEISSNER. I must say I became aware of it in reading your report and I was quite taken aback by it. It is the policy of the Service for criminal aliens to be held at Oakdale or at San Pedro. If in fact there are districts or personnel that are reluctant to do

that because of chits on a piece of paper, I think we have to overcome that attitude.

Senator ROTH. Commissioner, I want to thank you and your associates for being here today. I recognize again that you just took over, but it does seem to me that there needs to be some innovative thinking and better utilization of modern methods. We wish you success and we look forward to working with you.

Ms. MEISSNER. Thank you, and I endorse that sentiment and I hope that you will take from this session our commitment to address this very forcefully. Thank you.

Senator ROTH. We may have some more additional questions in writing. Thank you, Commissioner Meissner, Mr. Shaw and Mr. Kleinknecht.¹

At this time, I would like to call forward representatives of the Executive Office of Immigration Review, which is the office that hears immigration matters, including those involving criminal aliens. Judge Armstrong, who is the Assistant Chief Immigration Judge will give a statement. He is accompanied by Judge Fong, who sits in the Los Angeles office. Both Judge Fong and Judge Armstrong will answer questions.

We thank you gentleman for being here today and I would ask that you both stand because of our requirement that cell witnesses take the oath.

Do you swear the testimony you will give the Subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Judge ARMSTRONG. I do.

Judge FONG. I do.

Senator ROTH. Thank you, gentleman. Please be seated.

Mr. Armstrong, we will include your prepared statement in its entirety and we look forward to hearing you.

TESTIMONY OF JUDGE JERE ARMSTRONG, ASSISTANT CHIEF IMMIGRATION JUDGE, EXECUTIVE OFFICE OF IMMIGRATION REVIEW; ACCCOMPANIED BY JUDGE THOMAS FONG, IMMIGRATION JUDGE, LOS ANGELES, CA

Judge ARMSTRONG. Thank you very much, Mr. Chairman.

We appreciate the opportunity to appear before you this afternoon to discuss the Executive Office for Immigration Review's Institutional Hearing Program, and other immigration judge hearings for aliens convicted of crimes.

In our institutional hearing program, immigration judges travel to correctional facilities throughout the United States to hold deportation or exclusion hearings for incarcerated aliens. Our goal in that program is to complete as many of those cases as is possible while the alien is serving his or her sentence.

Following the enactment of the Immigration Reform and Control Act of 1986, the Executive Office for Immigration Review entered into a cooperative effort with the Immigration and Naturalization Service, the Federal Bureau of Prisons, and State correctional officials to provide civil immigration hearings to aliens serving criminal sentences. The result of that cooperative effort was the develop-

¹ The document referred to was marked Exhibit #42 and can be found on page 87.

ment of the institutional hearing program which is now established in a number of Federal facilities, every State, the District of Columbia and Puerto Rico.

In California, where your staff visited, we have the foremost program in the country in terms of case completions. We currently do hearings at four locations in California, the Donovan correctional facility near San Diego, the Calipatria correctional facility near El Centro, the Los Angeles County facility, and the Federal prison at Pleasanton, California. For Fiscal Year 1993, we received 2,823 case filings at those California sites. We completed 2,772, or 98 percent of those cases.

Another example of another productive and increasingly extensive State program is in New York State. We started in 1986 with a single location in Fishkill. Over the years, the case load in New York has expanded. We have now increased to 7 locations and we have 10 immigration judges holding hearings. We have dedicated up to 36 weeks of immigration judge hearing time per year in New York.

Over the course of the California and New York programs the Executive Office for Immigration Review has enjoyed outstanding cooperation from the State correctional officials. That cooperation is the key to the success of our program.

Since the inception of the institutional hearing program in 1986, the number of immigration hearings completed as a result of our program has steadily increased. In Fiscal Year 1988, we completed 1,457 cases. This past fiscal year, 1993, we completed 8,764 cases, a 600-plus percent increase in 5 years. This past fiscal year, 52 immigration judges traveled to correctional institutions to hear deportation and exclusion cases. They spent more than 1,000 immigration judge days hearing those cases inside prisons and correctional facilities.

The number of cases we are receiving and completing involving criminal aliens is increasingly dramatically. To date the executive office has been successful in completing the cases that we receive expeditiously. We constantly monitor the case load through the use of our automated information system, and we adjust our scheduling of hearings using that automated system as new case filings dictate.

In addition to the institutional hearing program we also conduct thousands of hearings each year outside the prison setting for aliens with criminal convictions. In Fiscal Year 1993 immigration judges completed approximately 26,000 criminal-based cases outside the institutional hearing program. These cases resulted in approximately 19,000 orders of deportation.

The institutional hearing program is one of the Executive Office for Immigration Review's top priorities. We are committed to expend whatever resources are necessary, within our appropriated resource levels, to keep pace with the increasing case load.

We thank you again for this opportunity to appear. Judge Fong and I will be happy to answer your questions.

PREPARED STATEMENT OF JUDGE JERE ARMSTRONG

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to discuss the Executive Office for Immigration Review's (EOIR) Institutional Hearing Program (IHP) and other immigration judge hearings for aliens convicted of crimes. In the IHP, immigration judges travel to correctional facilities throughout the United States to hold deportation or exclusion hearings for incarcerated aliens. Our goal is to complete as many cases as possible while the alien is serving his or her sentence so that a final disposition of the case will result prior to or at the time of an alien's release from incarceration. As with all immigration judge matters, these hearings are adversarial proceedings with full due process protections, including the right to counsel at no expense to the government. All immigration judge hearings are conducted pursuant to the provisions of the Immigration and Nationality Act.

Background

Following enactment of the Immigration Reform and Control Act (IRCA) in 1986, EOIR entered into a cooperative effort with the Immigration and Naturalization Service (INS), the Federal Bureau of Prisons (BOP), and State correctional systems to provide civil immigration hearings to aliens serving criminal sentences prior to release from custody. The result of this cooperation was the development of the IHP which, through careful coordination, is now established in a number of Federal facilities. We also have the capability to hold hearings in every State, the District of Columbia, and Puerto Rico.

Structure of the Program

The IHP provides expeditious hearings for inmates in Federal custody by centralizing inmate populations at designated BOP facilities. Currently, alien inmates requiring an immigration hearing are being sent to six Federal facilities: Oakdale, Louisiana; Big Springs, Texas; Lexington, Kentucky; Leavenworth, Kansas; La Tuna, Texas; and Pleasanton, California. These facilities are capable of servicing both male and female inmates at all security levels. Hearings are scheduled at these Federal facilities based upon the pending caseload at each location.

We have coordinated with each of the fifty States, the District of Columbia, and Puerto Rico and are able to hold hearings in their facilities, as appropriate. In the State systems, expeditious hearings have been facilitated by the establishment of centralized and regional State institutional hearing locations. Under our current program, immigration judges preside or have presided at 77 correctional hearing locations nationwide. We also preside at Oakdale II in Louisiana where criminal aliens are detained who have finished serving their sentences. Among our most extensive and productive State programs are those in California, Florida, Texas and New York.

In California, we have the foremost program in the country in terms of case completions. We currently do hearings at four locations—the Donovan Correctional Facility near San Diego, the Calipatria Correctional Facility near El Centro, the Los Angeles County Facility, and the Federal Prison at Pleasanton. For fiscal year 1993, we received 2,823 cases at those California sites. We completed 2,772 or 98 percent, of the cases filed.

New York is another example of a productive State program. We started in 1986 with a single location, Fishkill. Over the years, the case load has expanded and we have increased to seven locations, with a total of ten immigration judges holding hearings. We have dedicated up to 36 weeks of hearing time per year in New York. EOIR is prepared to increase the judge time as necessary, within appropriated resources, to expeditiously handle any additional cases that we receive. Over the course of the California and New York programs, EOIR has enjoyed outstanding cooperation from State correctional officials. That cooperation is the key to the success of those programs.

Resources Expended

Jurisdiction vests with the immigration court at the time that a charging document is filed by the INS. Once we have jurisdiction, IHP cases are assigned to an immigration judge and are handled on a priority basis. Currently, EOIR employs 87 immigration judges nationwide. In addition to criminal alien cases, these judges are assigned to conduct deportation, exclusion, and other related hearings for aliens who are not incarcerated or detained throughout the United States. The IHP cases constitute an increasing, but still relatively small, percentage of the total matters that immigration judges hear.

Since the inception of the IHP in 1986, the number of immigration hearings completed as a result of our program has steadily increased. In fiscal year 1988, we

completed 1,457. In fiscal year 1989, the number of completions rose to 3,127. In fiscal year 1990, the number was 3,358. In fiscal year 1991, the number was 5,165. In fiscal year 1992, the number was 6,783, and in fiscal year 1993, the number was 8,764—a 600 plus percent increase in 5 years. As of October 1993, we have 2,023 pending cases nationwide. These cases consist, for the most part, of recent filings.

Using our Automated Nationwide System for Immigration Review (ANSIR), EOIR can track the current status of all of the cases in our system. The ANSIR system can provide reports showing the location and volume of incoming cases, which allows us to schedule hearings at the prisons so as to most effectively use our limited resources.

To give you some insight into the resources which are used for these hearings, in fiscal year 1993, 52 immigration judges traveled to correctional institutions to hear deportation and exclusion cases there. They spent more than 1,000 immigration judge days hearing IHP cases (these figures do not include INS resources expended.)

Although we attempt to schedule our hearings as efficiently as possible, ideally with full days or a full week of cases calendared for each trip to an IHP site, there are some hearing locations, such as Montana and Alaska, that have only a handful of cases at a time. It is not cost effective from our standpoint to send a judge to hear that few cases; however, we do provide these services because we are committed to the intent of the statute and to our goal of completing as many cases as possible before the inmate's sentence is completed.

Future Trends

It is clear from the statistical trend that the number of cases we are receiving and completing involving criminal aliens is increasing dramatically. To date, EOIR has been successful in completing the cases that we receive in an expeditious fashion. We constantly monitor the case load through the use of our automated information system and adjust our scheduling of hearings as new filings indicate.

We are constantly exploring additional innovative approaches to more efficiently handle our case load. For example, we are making some use of telephonic Master Calendar hearings to increase hearing time and to save travel expenses where possible. We have also permitted written stipulations of deportation in some cases, whereby an alien, through counsel, waives an in-person hearing and accepts an order of deportation, again, increasing efficiency.

This institutional hearing program is one of EOIR's top priorities. We are committed to expend whatever resources are necessary within appropriated resource levels, to keep pace with this increasing case load.

Hearings for Aliens with Criminal Convictions Outside the Prison Setting

In addition to the IHP, EOIR conducts thousands of hearings each year for aliens with criminal convictions. These cases are conducted at INS detention facilities in several locations for those who are in Service custody, and also at immigration courts in cities throughout the United States for those not in custody.

To give you a sense of the magnitude of these hearings, in Fiscal Year 1993, immigration judges completed approximately 26,000 criminal-based cases outside the IHP resulting in approximately 19,000 orders of deportation. As in all cases before immigration judges, these proceedings are adversarial and are conducted with complete due process protections pursuant to applicable law.

Thank you again for this opportunity to appear. I will be happy to answer any questions that you may have.

Senator ROTH. Thank you, Judge Armstrong.

Are your judges, as a whole, overwhelmed with criminal alien cases?

Judge ARMSTRONG. No, they are not, Senator. We have the capacity to expand our program in many places to hear many more cases. As I indicated, this is a top priority for the Executive Office for Immigration Review, and we will dedicate our resources, to the extent we have them, to this program.

Senator ROTH. We heard last week that the deportation process is very complex and very complicated and needs to be simplified. First, let me ask you do you agree with that statement, and if you do, what would you do to simplify it?

Judge ARMSTRONG. I would not—well, I guess I would probably call the process, in some respects, complicated. To those of us who

work with it, it is not unduly complicated. To laymen, and certainly to the aliens who come before our courts, the process may appear to be very complicated.

Senator ROTH. How long does a typical case take?

Judge ARMSTRONG. For a criminal alien, sir?

Senator ROTH. Yes.

Judge ARMSTRONG. With an application for relief, such as 212(c) application or an application for asylum, our latest figures show that it takes about 10 months for the case to go through the application process, the appeals.

Senator ROTH. What is 212(c)?

Judge ARMSTRONG. 212(c) refers to Section 212(c) of the Immigration and Nationality Act. Under that provision, criminal aliens who have been lawfully admitted for permanent residence to the United States, who have been in the United States for 7 years continuously, and who have not served a sentence for 5 years or more for a felony can be granted relief from deportation. Their excludability or their deportability can be waived under that provision of the statute.

That is one area of relief where the Act could be simplified that would probably expedite the process. That is by simply changing the statute which now requires the alien to have served 5 years of a sentence to a felony, so that the requirement to be ineligible for 212(c) relief would be simply that the alien be sentenced to 5 years.

Senator ROTH. How much time do appeals take? Can a criminal alien make more than one appeal?

Judge ARMSTRONG. The administrative appeal process from the immigration judge hearing is to the board of immigration appeals. And then from there they can, in some cases, go into the Federal court systems.

Senator ROTH. Do you think that that process could be simplified and limited?

Judge ARMSTRONG. I am not really prepared to comment on the methods for simplifying the appeals process but certainly the appeals could be limited to certain individuals.

Senator ROTH. Do you have any idea how many appeals are made by the typical criminal alien?

Judge ARMSTRONG. How many appeals? No, I do not, Senator.

Senator ROTH. I understand that immigration judges can try cases in absentia. That is, the hearing can proceed even if the alien does not appear. When do you do this and how often is it done?

Judge ARMSTRONG. That is correct. We do conduct hearings in absentia and we do that, roughly, in about 20 to 30 percent of our cases in some locations, Los Angeles being one of them. I will defer to Judge Fong in a moment to respond more directly regarding his jurisdiction, but this happens when the alien fails to appear. If, for example, the criminal alien has been released from incarceration and fails to show up for the hearing, the immigration judge does have the authority to proceed in absentia and issue a final order of deportation.

Senator ROTH. Judge Fong, would you care to comment?

Judge FONG. Yes, Senator. In regard to my experience in Los Angeles, on the average master calendar, which is our pleading calendar when the first cases are brought before us, we normally have

anywhere from 25 to 35 new cases filed that day. It could average anywhere from 25 percent to as high as 50 percent of a no-show or failure to appear rate. Those are normally when we proceed with in absentia hearings if the Government is ready to proceed and present their evidence on those issues.

Senator ROTH. How effective is it to try cases in absentia?

Judge FONG. They are effective in the sense that we have an order issued. If the Government presents their case, and of course without challenge by the aliens, since he or she is not there, if the evidence is sufficient, the judges will find deportability and issue an order of deportation which directs the Government to deport the alien if and when apprehended. As to if that occurs, obviously I cannot answer that.

Senator ROTH. My concern is whether any efforts are made to apprehend these criminal aliens who are ordered deported in absentia? Last week we heard that large numbers of criminal aliens who are ordered deported are still in this country. Is this an effective practice?

Judge FONG. I am sure in some regard it is not. I, on a common basis, as well do other immigration judges, receive motions to reopen years after orders of deportation have been issued. Normally this is when an alien either has obtained some equity under the law because of the time he has remained here, or sometimes when the Government sends their 72-hour notice notifying them that they are to report for deportation is when normally we receive motions to reopen and stays of deportation from aliens. And then of course, we discover at that point that an order that we had issued earlier had not been effectuated.

Senator ROTH. As I understand, certain exceptions to deportation are made where an alien has been a resident for 7 years; is that correct?

Judge FONG. That is correct. That is, I believe, the question you referred to earlier of Section 212(c) waivers.

Senator ROTH. As part of that 7 years can time spent in jail count?

Judge FONG. It absolutely does. In fact, a number of times when we are in the middle of a 212(c) hearing, we may find out that before we can complete a decision on an application, the individual may have been rearrested and reincarcerated. At that point, under the laws that presently stand, we must administratively close the case until the individual serves his time. Then once he, on a detainer, is returned to INS authority and custody, we begin the proceeding at that point. But that period of time, in regard to that 7 years is added to and it is included.

Senator ROTH. Does that make any sense?

Judge FONG. That is the law we are ordered to follow, Senator.

Senator ROTH. Is that a requirement of the law?

Judge FONG. That is the law we are ordered to follow.

Senator ROTH. Do you recommend that that law be modified?

Judge FONG. Senator, that is a policy question. I am an immigration judge that is supposed to follow the laws. If you are asking my personal opinion, it probably needs reexamining.

Senator ROTH. Judge Armstrong?

Judge ARMSTRONG. I would agree with Judge Fong, Senator. That is just my opinion.

Senator ROTH. Just let me say, as one person, I think it is ridiculous. It seems to me it calls for reform.

What percentage of criminal alien cases being presented by INS are completed before the criminal alien release date?

Judge ARMSTRONG. Approximately 79 percent in this past fiscal year, Mr. Chairman.

Senator ROTH. Why are some cases not completed prior to that release date?

Judge ARMSTRONG. Why are they not, sir?

Senator ROTH. Yes.

Judge ARMSTRONG. There could be a multitude of reasons. Some cases are more complicated than others, involve more witnesses than others. As the hearing process becomes more complicated, the appeals process becomes more complicated, the record becomes more lengthy, and the appellate bodies become more involved in examining that record. That is one reason, but there could be any number of reasons why.

Senator ROTH. Let me ask you this, Judge Armstrong. In your prepared testimony you State that your office has accepted written stipulation of deportation in cases when an alien waged an in person hearing. How widespread is this and can it be expanded?

Judge ARMSTRONG. It is not very widespread at all, Mr. Chairman. It could be more widespread, but this is, in effect, an administrative guilty plea when the alien stipulates that he is deportable and this is done in writing in some cases without even an appearance in court at all.

Senator ROTH. Could the so-called quick deports that are targeted by some institutional hearing programs be deported by such a written stipulation?

Judge ARMSTRONG. Yes, sir.

Senator ROTH. Why are they not?

Judge ARMSTRONG. That is a question I cannot answer, Senator. I do not know. But in some places, for example in the criminal alien program in Texas, that process is widely used.

Senator ROTH. So it depends on district by district?

Judge ARMSTRONG. Not district by district, but court by court, whether the bar will agree to it, whether the parties all agree to it. In the places where it has been tried, it seems to have been fairly successful.

Senator ROTH. Judge Fong, I heard testimony last week that led me to believe that L.A., where you sit as an immigration judge, has a very large criminal alien population, at least as compared to the rest of the Nation. Would you say that is a correct assessment?

Judge FONG. My impression is that it is, Senator, although when it comes to the criminal alien program itself, that is the detained one, from the statistics we have for the year ending September of 1993 for the L.A. County jail system which is the one that I specifically and regularly attend, there were 614 criminal alien cases filed in the detailed program. We completed 622 through that same period. Of course, there was a carryover from months before that 12 months period, which is the explanation for that completion rate.

But there certainly appears to be more because of course we obtain many more criminal aliens as non-detained bonded-out aliens. And of course, many others are heard by our two judges in San Pedro who hear detained cases and many of them, the majority of them, from what I understand of speaking with the judges, are criminal aliens who have not completed their hearings in perhaps a State or one of our Federal institutions but have been referred to an INS detention facility.

Senator ROTH. Now I understand that only one judge a week is assigned to the L.A. County institutional hearing program; is that correct?

Judge FONG. That is correct. At this time we have one judge every Thursday scheduled for a whole day of hearings in the Los Angeles County jail system. Normally, as I think Mr. Rinzel mentioned earlier, we normally complete the number of cases filed with us normally within a half day however. That has been our experience so far.

Senator ROTH. So that one judge has had no problem handling all the cases presented by the INS?

Judge FONG. No, as Judge Armstrong indicated, it is a priority with the EOIR and we are prepared to do more cases.

Senator ROTH. We understand that the L.A. County jail holds approximately 20,000 inmates on a given day and that approximately 11 percent of that population are aliens. That means on a given day there are about 2,200 criminal aliens in the L.A. County jail. My question to you is why does the INS present only or as few as 6 cases to the institutional hearing program?

Judge FONG. Senator, I cannot really respond to that, in regard to specifics, but I know that at least in the Los Angeles County jail system, the average stay in that time for any individual there is usually 30 days or so. Of course, within that period of hearing time, that may not be sufficient time for cases to be heard or filed and completed. I believe that it is their intent that a quick deport, I think is how they described it, are the type of cases they wanted presented there.

Senator ROTH. Judge Fong, what is meant by the term bag and baggage notice that is given to criminal aliens?

Judge FONG. That is another term for what is also called the 72-hour notice. I believe 8CFR 243.3(b) and the INS's Operation Instructions 243.3(c) are the specific references. It is Form I-166, I believe which is the actual form number for a bag and baggage notice. That is the 72-hour notice to report for deportation.

Senator ROTH. The staff testified last week that many criminal aliens who are given this notice never surrender to be deported. Have you experienced this?

Judge FONG. As a former trial attorney with the INS and a district counsel in the 1980s, as well as an immigration judge, I have experienced that because in that regard I would receive—either as a trial attorney and of course now as an immigration judge—motions to reopen, as I mentioned earlier. That is when we learn that there has been a failure to report for deportation that has occurred. So it does certainly occur.

Senator ROTH. Does the 72-hour notice make sense?

Judge FONG. It needs reexamining also, Senator.

Senator ROTH. Well, we have a vote on the Senate floor. I may submit some additional questions, as other members of the panel could. We would appreciate the answers being submitted.¹

Mr. RINZEL. Mr. Chairman, I have a list of 43 exhibits that I would like to include in the printed record.

Senator ROTH. Without objection.

Gentleman, I apologize for my rushing off, but I appreciate your being here. As I said, we will have undoubtedly have further questions, for which we will leave the record open, and we appreciate your cooperation.

The Subcommittee is in recess.

[Whereupon, at 3:50 p.m., the hearing was adjourned.]

¹ The document referred to was marked Exhibit #43 and can be found on page 94.

APPENDIX

PREPARED STATEMENT OF SENATOR COHEN

Thank you, Mr. Chairman. I am pleased to have the opportunity to participate in these hearings on the very serious problem of criminal aliens.

In just over a decade, the number of aliens in State and Federal prisons has grown from less than 9,000 to more than 50,000. The cost of imprisoning these criminal aliens is estimated to be over \$700 million a year. This figure does not include the funds necessary to investigate, detain, and deport criminal aliens.

These are certainly alarming statistics which illustrate the significant costs of this growing problem to American taxpayers. During last week's hearing, staff from the Permanent Subcommittee on Investigations (PSI) testified that the Immigration and Naturalization Service (INS) is unable to identify many convicted criminal aliens and ensure their expeditious deportation.

To illustrate this point, PSI staff described a very disturbing series of events involving a criminal alien from the Dominican Republic. This individual was apprehended and deported in 1977. At some point prior to 1980, he reentered the U.S. and proceeded to commit a series of serious crimes until he was again arrested, convicted, and incarcerated. Upon being released, however, he was neither deported nor detained by INS, nor was he prosecuted for reentry even though he had reentered after deportation in violation of Federal law. I am very troubled by the fact that over 10 years this criminal alien used a minimum of 10 aliases and five dates of birth to evade the INS. In 1988 he was apprehended again in Puerto Rico and deported a second time. As he was using an alias, INS officials were not aware of his earlier deportation. This criminal alien again returned to the U.S. after his second deportation and committed additional crimes.

His criminal activity in the U.S. spanned a period of 16 years and he is now finally being prosecuted for reentry after deportation. However, this prosecution occurred only because INS discovered that he had been deported several times after and an agent's suspicion lead to a manual search of fingerprint records to determine he had previously been deported under different names.

I cite this example to point out the many shortcomings of the INS Criminal Alien Apprehension Program that will be discussed today. As noted above, the agency's inefficient recordkeeping system allows criminal aliens to easily escape detection by the INS. In addition, the INS fails in many cases, to complete deportation proceedings before the criminal alien is released from prison. Even in those cases where aliens have been ruled deportable, they are often given 72 hours of unmonitored freedom before they must report to the INS for deportation.

However, while the INS is ultimately responsible for enforcing our immigration laws, I do not want this hearing to be about assigning culpability for this problem. Congress must certainly share some of the blame for our complicated and unwieldy deportation process.

Loopholes in our criminal alien detection and deportation system are enabling large numbers of these aliens to avoid deportation. Even worse, the Federal Government pays for the processing and deportation of these criminals, only to have them infiltrate our borders a few months, even a few days, after being removed from the country. These criminal aliens are once again free to roam our streets and commit crimes against U.S. citizens and legal resident aliens. To make matters worse, U.S. taxpayers have to bear the additional costs of processing these aliens a second or third time.

Similarly, States and local governments, which have adopted policies that limit, sometimes even prohibit, cooperation with the INS in its efforts to enforce our Nation's immigration laws, must also share the blame. Although my home State of Maine has not enacted any non-cooperation laws, I am very concerned about this problem and want to commend Senator Roth for the amendment he offered last

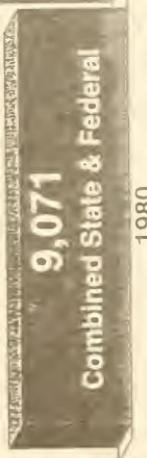
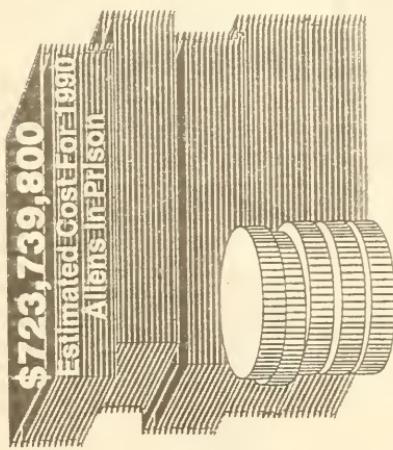
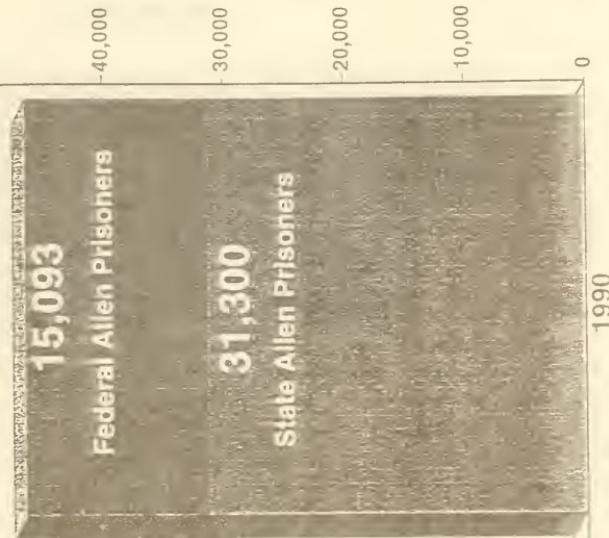
week to the crime bill. His amendment, which passed overwhelmingly, would require State and local governments to provide information to Federal immigration authorities when the information is necessary to enforce Federal immigration laws. It would also bar Federal funding under the crime bill to those State and local governments that do not cooperate. This is an important step, in my view, toward addressing our criminal alien problem.

I look forward to hearing from INS Commissioner Doris Meissner on ways to address this problem and make better use of INS resources. In view of the soaring Federal budget deficit, it is critically important that Federal resources be managed in the most efficient way possible. And, in view of the nature and prevalence of violent crime in this country, it is crucial that we prevent these dangerous felons from illegally reentering the United States. I am hopeful that through cooperation between the INS, the Congress, and the State and local governments, we can better address the abuse of our Nation's immigration and justice systems by criminal aliens.

Senate Permanent Select Committee
on Investigations
EXHIBIT # 1

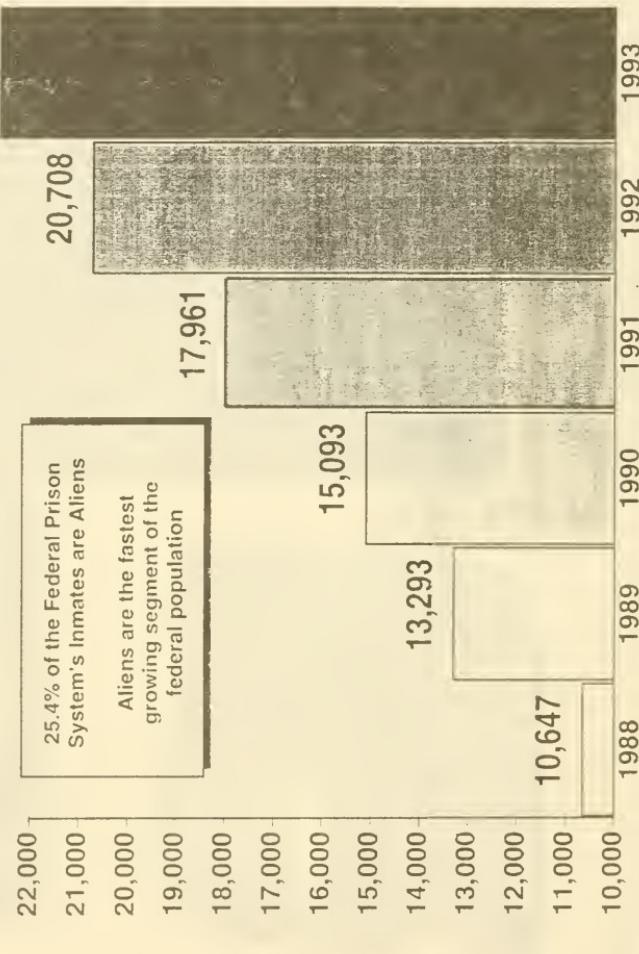
Combined Federal / State Alien Prisoners in 1990

46,393



Aliens in Bureau of Prisons Custody

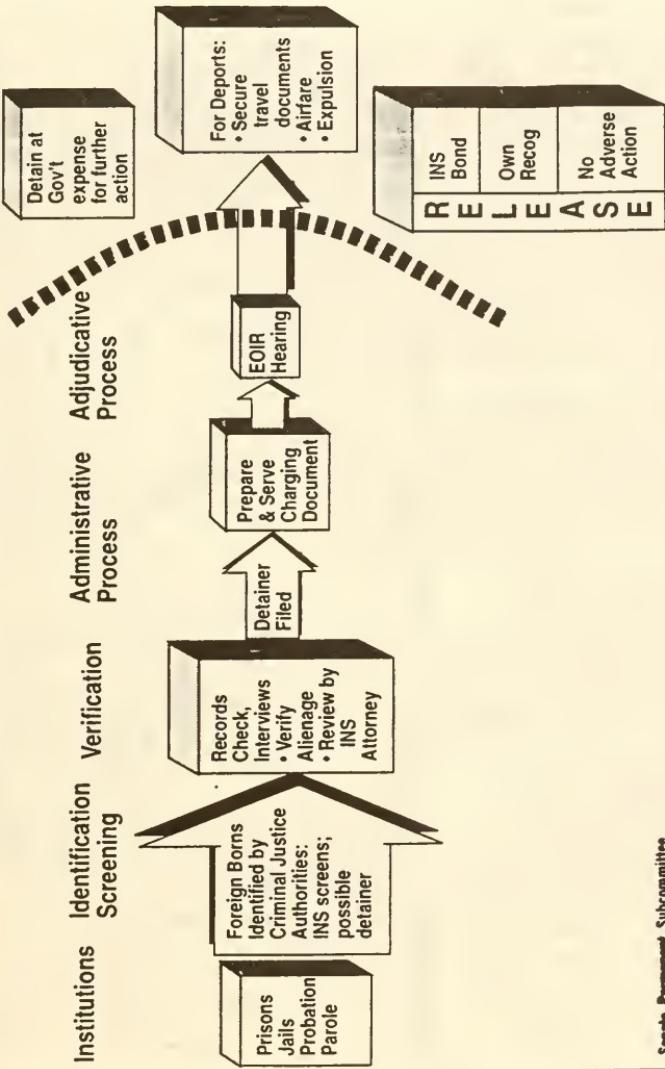
22,626



Senate Permanent Subcommittee
on Investigations

EXHIBIT # 2

CRIMINAL ALIENS: DEPORTATION PROCESS SIMPLIFIED



Senate Permanent Subcommittee
on Investigations

EXHIBIT # 5

Senate Permanent Subcommittee
on Investigations

EXHIBIT # 4

Estimated deportable criminal aliens

Actual Population

PRISON
883,593
1992

88,000

JAIL
444,584
1992

44,000

PROBATION
2,670,234
1990

267,000

PAROLE
531,407
1990

53,000

452,000

Deportable Aliens

**18,644 of the 85,310 Criminal Aliens EOIR ordered deported
since Fy 89 have NOT been removed**

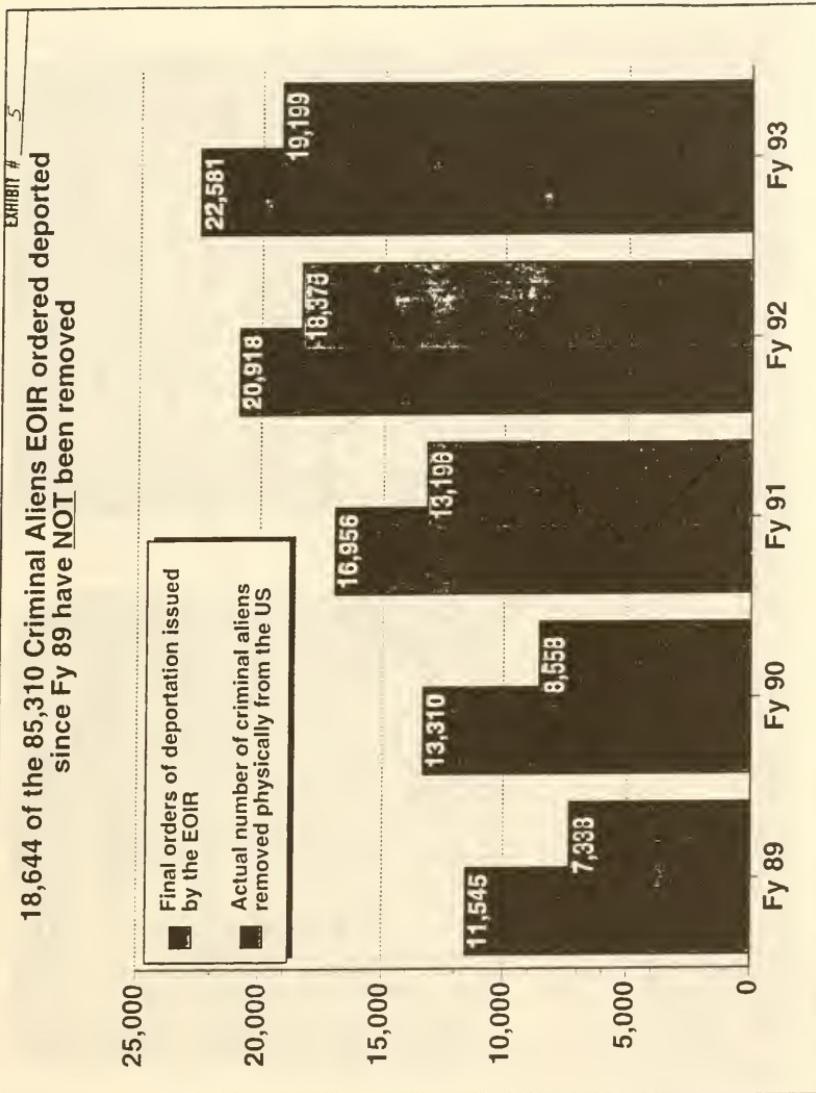


EXHIBIT # 6

Undetained Aliens

Aliens

Criminal Aliens

- The INS "can't locate" 78,000 aliens.
- INS reported that 27,000 aliens with deportation orders are "at large".
- In one district, New York:

Since 1991

4,114 "Notice to appear for deportation Hearings"	3,412 "Failure to surrender"	1,893 Bonds Breached in FY 91
--	---------------------------------	-------------------------------

- 10,665 Undetained criminal aliens failed to appear for EOIR hearings from FY89-FY93.
- INS identified 10,875 aggravated felons who "failed to report" for deportation proceedings prior to 1992.

Encarnacion G. 08

DECLARACIÓN DE JOSE' CARMEN ENCARNACIÓN

Mi nombre es José' Carmen Encarnación. Nací en la República Dominicana, país del cual soy ciudadano. Naci el 16 de febrero de 1958.

Desde joven tuve la intención de venir a los Estados Unidos. Mientras estaba en la República Dominicana me enteré que era muy fácil viajar a los Estados Unidos desde Puerto Rico. En o alrededor de 1977 viaje por barco a Puerto Rico. Tenía planeado viajar a los Estados Unidos desde Puerto Rico.

Cuando llegué a Puerto Rico en 1977, simplemente me bajé del barco y salí caminando, sin que nadie me preguntara nada ni me inspeccionara. Me quedé en Puerto Rico por varios meses y a la larga el INS (Servicio de Inmigración y Nacionalización) me Naturalización arrestó.

El INS me deportó en o cerca de 1977 por haber entrado sin inspección.

En o alrededor de 1978, regresé a los Estados Unidos. Viaje por barco a Puerto Rico y de ahí en un segundo barco viaje a un puerto en o cercano a Nueva Jersey. Al llegar a Nueva Jersey me bajé del barco y salí caminando. Nadie de inspección ni me hizo ninguna pregunta.

Por fin me radicué en la Ciudad de Nueva York. En o cerca de 1980 fui arrestado y condenado por asalto a mano armada. Cumplí una condena de cuatro años en una prisión del estado de Nueva York. Despues de cumplir la condena, el INS me deportó por segunda vez.

En o alrededor de 1988, fui arrestado por el INS por entrada sin inspección. Yo había entrado a Puerto Rico con la intención de viajar a los Estados Unidos. En o alrededor de 1988 fui de nuevo deportado a la República Dominicana por tercera vez.

En o alrededor de 1989 regresé a los Estados Unidos. De nuevo viaje por barco a Puerto Rico y de ahí a un puerto en o cerca de Nueva Jersey.

En la República Dominicana es sabido que ésta es una forma muy fácil de viajar a los Estados Unidos. Hay tres barcos que viajan cada semana desde Puerto Rico al mismo puerto en o cerca de Nueva Jersey. Y son muchos los barcos que viajan de la República Dominicana a Puerto Rico.

En o alrededor de 1990 fui arrestado por vender heroína en o cerca del Bronx en Nueva York. Pasé dos días en la carcel, después de lo cual me soltaron.

Despues fui arrestado en o cerca de Harrisburg, Pennsylvania por estar en posesión de 1 onza de cocaína. Fui condenado y sentenciado a tres años.

Encarnación y os

Ya he cumplido mi condena y estoy esperando a que el INS me deporte
a la República Dominicana.

DECLARATION OF JOSE CARMEN ENCARNACION

My name is Jose Carmen Encarnacion. I am a native and citizen of the Dominican Republic. I was born on February 16, 1958.

Since I was young, I have intended to come to the United States. I learned while in the Dominican Republic that it is very easy to travel to the continental United States by first going to Puerto Rico. In or around 1977, I travelled by boat to Puerto Rico. I planned to travel to the continental United States from Puerto Rico.

When I arrived in Puerto Rico in 1977 I simply walked off the ship, no one inspected me or asked me any questions. I stayed in Puerto Rico for several months and was eventually arrested by the INS.

The INS deported me in or around September of 1977 for entry without inspection.

In or around 1978, I returned to the United States. I travelled by ship to Puerto Rico and then travelled by a second ship to a port in or near the state of New Jersey. I walked off the ship in New Jersey. No one inspected me or asked me any questions.

I eventually settled in New York City. In or around 1980 I was arrested and convicted for armed robbery. I served four years in a New York state prison. After serving my time, I was deported for a second time by the INS.

In or around 1988 I was arrested by the INS for entry without inspection. I had entered Puerto Rico with the intention of travelling to the continental United States. In or around 1988 I was deported back to the Dominican Republic for the third time.

In or around 1989, I returned to the United States. I again travelled by ship first to Puerto Rico and then to a port in or near New Jersey.

It is well known in the Dominican Republic that this is a very easy way to travel to the United States. Three ships a week travel from Puerto Rico to the same port in or near New Jersey. Many ships travel from the Dominican Republic to Puerto Rico.

In or around 1990 I was arrested for selling heroin in or near the Bronx, New York. I spent 2 days in jail and was released.

I was next arrested in or near Harrisburg, Pennsylvania for possession of an ounce of cocaine. I was convicted and sentenced to 3 years.

I have now served my time and I am waiting for the INS to deport me back to the Dominican Republic.

Statement of Manuel Salmeron Catalan

My name is Manuel Salmeron Catalan. I am 33 years old and I am serving time for illegal reentry.

I was born in Acapulco Mexico in 1960. My mother lived in the United States since I was 6 months old. She entered the United States illegally, and worked in Data Products in Woodland Hills, California. I lived with my grandmother in Acapulco until I was 8 years old.

I don't remember how I came to America the first time. I went to school in Canoga Park, California through the eleventh grade.

I first got in trouble with the law in 1978 -- I was charged with murder, convicted and sentenced to 10 years.

I was first deported in 1984. I returned within a day. I was arrested the same day and was deported a second time in 1984.

I stayed in Mexico about a week that time and returned through the hills to San Diego and then to Los Angeles.

I stayed out of trouble from 1984 until 1990. I was arrested for a controlled substance offense and received a three year sentence.

I was released in June 1992 and was deported from Donovan Prison along with six other people.

I returned to Los Angeles the following day and reported to my American Parole Officer. For six months, from June to December 29, I reported regularly to my parole officer. On the 29th of December, the INS picked me up for illegal reentry. I got 57 months for illegal reentry.

I've been married since May of 1985 and have 2 kids -- 4 and 7 years old. My family lives in California.

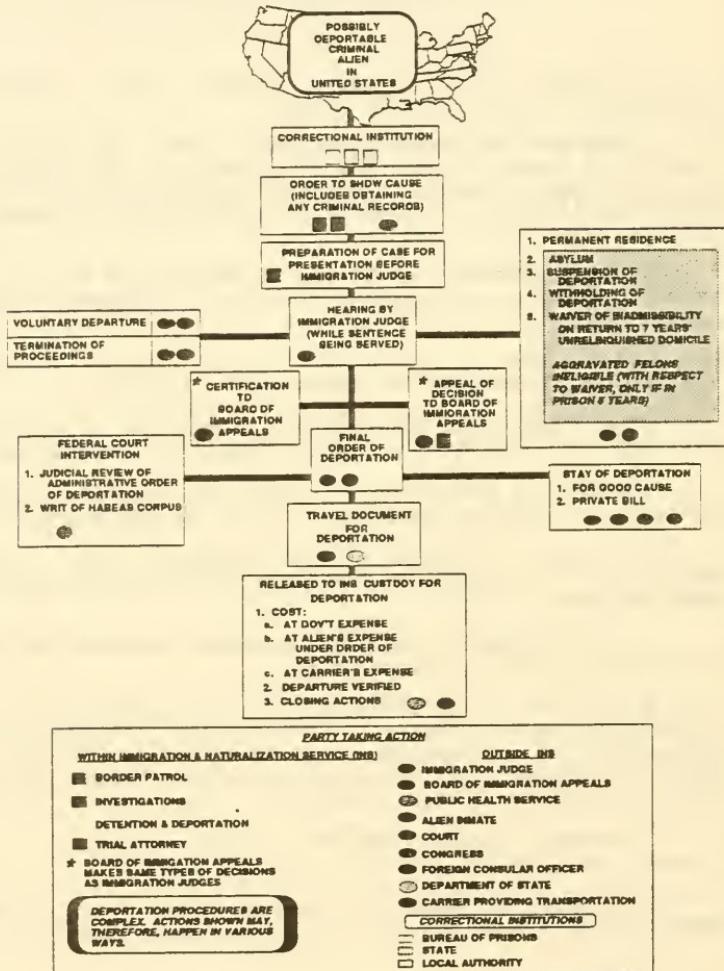
To survive in Mexico you need money and I don't have any. When they deport me again I will return to my family.

Senate Permanent Subcommittee
on Investigations

EXHIBIT # 11

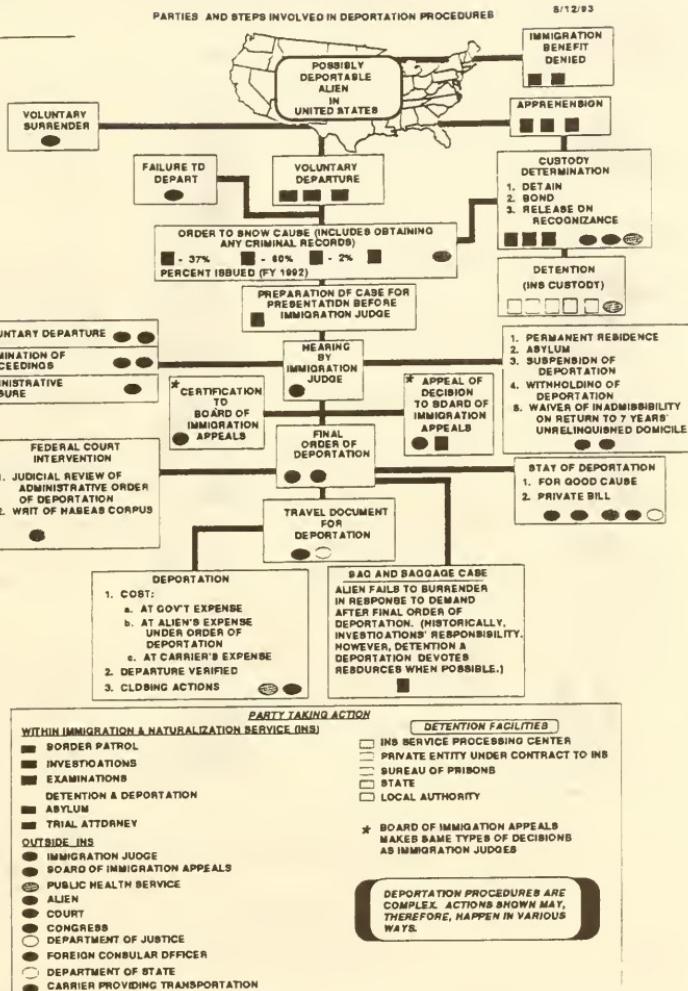
**PARTIES AND STEPS INVOLVED IN DEPORTATION PROCEDURES
INSTITUTIONAL HEARING PROGRAM**

6/12/03



Senate Permanent Subcommittee
on Investigations

EXHIBIT # 12



**U.S. IMMIGRATION & NATURALIZATION SERVICE
OFFICE OF ENFORCEMENT**

425 EYE STREET, N.W., WASHINGTON, D.C. 20536



MARCH, 1993

TEN WANTED CRIMINAL ALIENS

 <p>W/M, OPOB 08/01/59 LEBANON, 6'1". 185 lbs. HAIR/BLACK, EYES/BROWN</p> <p>CONVICTION: POSSESSION WITH INTENT TO DISTRIBUTE COCAINE</p> <p>AREGE, Antoine Nicolas A26 844 18G</p>	 <p>B/M, OPOB 11/15/49 HAITI, 5'7". 200 lbs. HAIR/BLACK, EYES/BROWN</p> <p>AKA: PHILLIPE, Pierre</p> <p>CONVICTION: POSSESSION OF COCAINE, CANNABIS, DRUG PARAPHERNALIA; POSSESSION OF FIREARM; BREACH OF BOND.</p> <p>PIERRE, Phillippe A24 703 774</p>
 <p>B/F, OPOB 05/21/66 JAMAICA, 5'3". 126 lbs. HAIR/BLACK, EYES/BROWN</p> <p>AKA: POWELL, Less Melonie</p> <p>CONVICTION: CONSPIRACY TO DISTRIBUTE MARIJUANA</p> <p>LEE, Less Melonie A41 652 009</p>	 <p>W/M, OPOB 11/19/46 MEXICO, 5'8". 175 lbs. HAIR/BROWN, EYES/BROWN</p> <p>AKA: ROCHA, Reul Jecinto Alanis ALANIS, Reul Jecinto Rocha ROCHA, Reul J.</p> <p>CONVICTION: POSSESSION OF COCAINE</p> <p>ROCHA-ALANIS, Reul Jecinto A26 219 903</p>
 <p>W/M, OPOB 01/03/61 EL SALVADOR, 5'4". 125 lbs. HAIR/BROWN, EYES/BROWN</p> <p>AKA: RAMOS, Jose R.; FLORES, Jose A.; RAMOS, Jose A.; RAMOS, Jose Ricardo</p> <p>CONVICTION: SEXUAL BATTERY</p> <p>RAMOS-FLORES, Jose Alfonso A38 851 955</p>	 <p>W/M, OPOB 04/25/50 TAIWAN, 5'6". 160 lbs. HAIR/BLACK, EYES/BROWN</p> <p>AKA: CHWAN JYE, LI JACK, LI: LI CHWAN, Chueh, JACK, Ma, JACK, MIH</p> <p>** MARTIAL ARTS EXPERT **</p> <p>CONVICTION: CONSPIRACY, ATTEMPT TO DISTRIBUTE MARIJUANA/COCAINE</p> <p>Li Chwan A26 392 022</p>
 <p>W/M, OPOB 04/08/45 MEXICO, 5'11". 180 lbs HAIR/BLACK, EYES/BROWN</p> <p>AKA: LAZANO, Alberto; ALVAREZ, Alberto; ALVAREZ-LAZANO, Alberto; LOZANO ALVAREZ, Alberto; SOTO, Alberto; LOZANA-ALVAREZ, Alberto; LOZANO, Alberto; LOZANO, Otto</p> <p>CONVICTION: POSSESSION OF DRUGS</p> <p>LOZANO-ALVAREZ, Alberto A19 851 616</p>	 <p>W/M, OPOB 05/01/75 MEXICO, 6'0". 190 lbs. HAIR/BLACK, EYES/BROWN</p> <p>CONVICTION: SEXUAL ASSAULT ON A MINOR</p> <p>LOPEZ-SOLIS, Huberto A25 834 439</p>
 <p>B/M, OPOB 07/27/63 JAMAICA, 5'5". 130 lbs. HAIR/BLACK, EYES/BROWN</p> <p>** MAY BE ARMED & DANGEROUS **</p> <p>CONVICTION: POSSESSION OF CONTROLLED SUBSTANCE</p> <p>CHRISTIE, Raphael Fitzgerald A38 959 982</p>	 <p>W/M, OPOB 10/10/59 MEXICO, 5'5". 140 lbs. HAIR/BLACK, EYES/BROWN</p> <p>AKA: CUEVAS, Gustavo, RIVOLI Reynaldo; PEREZ-VELASQUEZ, Jorge</p> <p>CONVICTION: POSSESSION OF COCAINE</p> <p>VASQUEZ-VELASQUEZ, Benjamin A26 372 472</p>

**IF THESE CRIMINAL ALIENS ARE ENCOUNTERED AND/OR
APPREHENDED IN THE COURSE OF YOUR NORMAL DUTIES,
THEY CAN BE IMMEDIATELY REMOVED FROM THE U.S.**

- CONTACT -
INS COMMAND CENTER
202-616-5000 COMMERCIAL
8-202-616-5000 FTS

M-374

FDL 93B-01

Senate Permanent Subcommittee
on Investigations
EXHIBIT # 22



Senate Permanent Subcommittee
U. S. Department of Justice on Investigations
~~Senate Permanent Subcommittee~~
EXHIBIT # 42
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 12, 1994

The Honorable William V. Roth, Jr.
Ranking Minority Member
Permanent Subcommittee on
Investigations
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Dear Senator Roth:

Judges Armstrong and Fong wish to thank you for the opportunity to testify before the Permanent Subcommittee on Investigations on November 16, 1993. This office received your additional written questions. Please find enclosed responses to those questions.

Let me know if I can be of further assistance.

Sincerely,
Sheila Anthony
Sheila F. Anthony
Assistant Attorney General

Answers to Additional Questions ofUnited States Senate
Committee on Governmental Affairs

Judge Jere Armstrong
Assistant Chief Immigration Judge

1. What percentage of immigration judge time is dedicated to criminal alien related matters?

Criminal alien related matters comprise 20 to 30 percent of the cases heard by immigration judges. However, there is anecdotal evidence that these cases take up more than 20 to 30 percent of the time of the immigration judges, due to case complexity. There are no actual statistics which track the percentage of judge time dedicated to criminal alien related matters.

2. Does the Executive Office of Immigration Review (EOIR) handle only those cases, including criminal alien cases, that the INS presents?

At the trial level, INS charging documents initiate deportation, exclusion and rescission hearings. These types of hearings comprise a majority of the IJ docket. However, EOIR handles other matters, such as appeals from deportation and exclusion orders, visa petitions and discrimination cases which are not always presented by INS.

3. Has the EOIR ever had to tell the INS it could not handle the number of criminal alien cases being presented?

No. EOIR has never had to tell the INS it could not handle the number of criminal alien cases being presented.

4. Is the INS presenting criminal alien cases to the EOIR early enough so that they can be completed prior to the criminal aliens release date and what percentage of cases are not being completed prior to release date?

In the majority of cases, INS is presenting criminal alien cases to EOIR early enough to be completed prior to the criminal alien's release date. During FY 1993, 79 percent of the criminal alien cases were completed prior to release. Only 21 percent were not completed prior to release.

- 2 -

5. You testified that so-called quick deportations targeted by some IHPs are deported by written stipulation. In Texas, for example, this process is used widely and successfully. Will EOIR expand this practice elsewhere? Does EOIR recommend statutory changes to sanction this procedure?

Both legislative and regulatory proposals dealing with the procedure are currently pending within the Department of Justice.

6. It was acknowledged by you and by Judge Fong that some practices need to be reexamined including the 72 hour "bag and baggage" notice, and the portion of 212(c) that permits time in prison to count toward citizenship. Specifically, what will EOIR do to see that these matters are examined, and when will such reexaminations occur?

72 Hour Bag and Baggage Notice

INS advises that it is the current practice of INS to allow at least 72 hours to elapse between the service of a deportation order and the execution of that order, unless the alien waives the 72 hour time period. The alien is notified in writing that he or she is to report at a designated time and place for deportation.

INS advises that it now has the authority pursuant to 8 C.F.R. §243.3.(b), to take into custody those individuals deemed to be flight risks or a danger to society. INS advises that aliens considered to be risks are often detained during the 72 hour period by virtue of that regulatory authority.

Currently, the Department is assessing whether the number of detentions during the 72 hour waiting period should be increased. Such a policy would need to be coupled with increased resources.

Section 212(c)

Under the current interpretation of §212(c), it is permissible to count the time in prison toward the time required to attain legal permanent residency. This interpretation needs to be modified. Time in incarceration should not be applied toward legal permanent residency. Furthermore, since good character is one of the conditions of naturalization, there should be a presumption that aliens who have been incarcerated should be denied citizenship. Only affirmative evidence of rehabilitation should be allowed to overcome this presumption.

- 3 -

The Department of Justice currently is reviewing §212(c) policy and intends to propose legislative modification of 212(c) language. In the last sentence of 212(c), the word "sentenced" should replace the word "served." The revised language would read:

The first sentence of this subsection shall not apply to an alien who has been convicted of one or more aggravated felonies and has been **sentenced** for such felony or felonies a term of imprisonment of at least 5 years. (emphasis added).

Answers to Additional Questions ofUnited States Senate
Committee on Governmental Affairs

Judge Thomas Fong
Executive Office for Immigration Review

1. How many immigration judges are there in the Los Angeles office?

There are 8 immigration judges in the Los Angeles area. There are 6 judges in the Los Angeles office and 2 judges in the San Pedro office.

2. Is it correct that the Los Angeles office handles all immigration matters, not just those involving criminal aliens?

It is correct that the Los Angeles office handles all immigration matters, not just those involving criminal aliens.

3. Approximately what percentage of the Los Angeles office's time is spent on criminal alien cases?

The Los Angeles immigration judges hear criminal alien cases in three different contexts.

(1) San Pedro Detention Facility

Historically 50 percent or more of the cases heard at San Pedro have been criminal alien cases, speaking recently with the two immigration judges in San Pedro, this number is now in the 75 percent range or higher.

(2) Los Angeles County Jail

The cases heard at the LA county jail are IHP cases. Therefore 100 percent of the cases heard are criminal alien cases.

(3) Los Angeles Immigration Court

The cases heard in immigration court are usually non-detained cases. In any given master calendar, approximately 20 percent of the cases presented involve aliens whose deportation charges are based on a criminal conviction.

It is difficult to gauge the percentage of IJ time spent on criminal alien cases, particularly taking into account the three different contexts as delineated above. I estimate that at least 25 percent, and likely more, of IJ time is spent on criminal alien cases, even though criminal alien cases comprise less than 25 percent of the overall IJ caseload.

- 2 -

Criminal alien cases take a disproportionately large amount of time because they are inherently complex. By their nature, criminal alien cases involve dual issues, i.e., criminal issues and immigration issues. Other time-consuming factors include deportability challenges by legal permanent residents and alien motions for waiver eligibility.

4. Is the Los Angeles office in any way overwhelmed with criminal alien cases?

No. The Los Angeles office is not overwhelmed with criminal alien cases, although they make up a good percentage of the caseload.

5. Could the Los Angeles office hear more criminal alien cases if the INS presented more cases?

Yes. The Los Angeles office could hear more criminal alien cases if the INS filed more cases. It should be noted however that, by statute, IJs are already required to give priority to criminal alien cases. An increase in criminal alien cases would necessarily extend the amount of time necessary to complete non-criminal cases. During my tenure as an IJ the past 9 years, the number of pending cases per Los Angeles IJ has fluctuated between 500 to 2500 cases. Given the inherent complexity of criminal alien cases, a marked increase in criminal alien filings could have a large impact on extending the time period to complete all cases and could increase the pending caseload as well.

6. Is it correct that if a criminal alien brings a motion to re-open, the criminal alien has been ordered deported but has not actually been deported and in your experience, are these motions common?

Yes. It is correct that usually when a criminal alien brings a motion to reopen, it means that the criminal alien has been ordered deported but has not actually been deported. The circumstances in which criminal aliens most often file motions to reopen are:

- (1) when they become eligible for relief from deportation due to the passage of time,
- (2) when they have been apprehended again,
- (3) when they have been given 72 hour "bag and baggage notice."

Yes. It is common to see motions to reopen where criminal aliens had been ordered deported but had not actually been deported.

- 3 -

7. In your experience, what types of underlying crimes are criminal aliens committing and which crimes are being committed in the greatest number?

In my experience, the underlying crimes being committed are most often related to controlled substance and drug abuse, often with the use of weapons. The weapons offenses also frequently result in crimes against persons, e.g., robbery and theft, and crimes against property, e.g., burglary and petty theft. Criminal aliens are also often convicted of crimes against minors, e.g., child molestation and child abuse.

As an IJ, I have also often encountered aliens who are convicted of crimes which are not *per se* always deportable offenses, e.g., vehicular code violations, such as driving without insurance, driving without a license, driving under the influence and tax code violations, such as filing fraudulent tax returns.



Senate Permanent Subcommittee
U. S. Department of Justice or Investigations
Office of Legislative Affairs EXHIBIT = 43

Office of the Assistant Attorney General

Washington, D.C. 20530

March 3, 1994

The Honorable William Roth
Ranking Minority Member, Permanent Subcommittee
on Investigations
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Roth:

Enclosed are answers to the follow-up questions from the November 16, 1993, hearing before the Subcommittee on criminal aliens.

Please do not hesitate to contact me if you have any questions about this or any other matter.

Sincerely,

Sheila Anthony
Sheila F. Anthony
Assistant Attorney General

Enclosure

QUESTION 1

What percentage of INS personnel and resources are dedicated to criminal aliens and what are the various tasks performed by INS personnel dedicated to criminal alien matters?

RESPONSE:

The duties involved to identify, process, hear, and remove a criminal alien from the United States require participation and action by 4 INS components: the Offices of Investigations and Border Patrol (for initial processing); General Counsel (for litigation purposes); and Detention and Deportation (for case tracking and expulsion), respectively. The activities include reactive efforts against criminal aliens (those who have been convicted of crimes and sentenced to incarceration, probation, parole, or given alternative sentences), and proactive efforts (identifying those aliens currently involved in serious criminal activity).

Investigations dedicates nearly one-third of its personnel and resources to criminal aliens. For FY 1993, this figure included 449 FTEs out of a total of 1,663 FTEs. This number represents 150 FTEs for the Violent Gang Task Force, 154 FTEs for the Organized Crime Drug Enforcement Task Force, and 145 FTEs for the Institutional Hearing Program.

The Office of General Counsel dedicates 238 of 494 Servicewide FTEs (44 percent) to criminal aliens. This is broken down per INS regions: Eastern, 65; Northern, 44; Southern, 69; Western, 51; and, Headquarters 9.

On any given day, 50 to 60 percent of the population detained in INS facilities consists of criminal aliens. Therefore, 50 to 60 percent of the Detention and Deportation (D&D) staff are involved in activities relating to the detention and deportation of these criminal aliens.

During FY 1993, the Border Patrol (BP) dedicated approximately 125 FTEs out of a total of 4,757 FTEs nationwide to the criminal alien program (2.6 percent of the Patrol's total FTEs in FY 1993).

Special agents and support personnel from 33 INS District Offices as well as Border Patrol agents in a few urban settings identify, interview, arrest and process criminal aliens for deportation up to and including the serving of the charging document.

The Office of General Counsel reviews pending charging documents for legal sufficiency and represents the government in administrative proceedings before the Executive Office for Immigration Review (EOIR) and the Board of Immigration Appeals. That office also assists with cases appealed to the federal courts.

Activities of INS D&D personnel include tracking cases, providing detention of aliens, providing escorts of aliens to the immigration court and consular offices, locating absconded aliens with final Orders of Deportation and expulsion of aliens from the United States.

Headquarters personnel from the 4 programs work closely with state, local and federal criminal justice entities to coordinate the national criminal alien program. This includes implementation of new law, budget formulation, long-range planning, etc.

Pursuant to the initiative announced by the Attorney General on February 3, INS criminal alien efforts will be enhanced through improving the efficiency of the Institutional Hearing Program (IHP), acquiring additional human resources in the form of lower-graded officers, and utilizing automated systems technology to significantly streamline its processes for identifying and processing criminal aliens for deportation proceedings in response to the demands of large numbers of criminal aliens within state and federal prison systems.

The cost to investigate and process criminal aliens is provided below. These are only the personnel costs to hire, train and sustain the workforce. They are the most recent figures available and do not include significant ancillary costs such as travel times, details, and detention and removal costs.

- Investigations; \$81.8 million;
- Detention and Deportation; between \$51 and \$60 million;
- Border Patrol \$6.9 million;
- General Counsel, \$16.08 million;

These costs total approximately \$155.78 to \$164.78 million.

According to preliminary data compiled on October 25, 1993, 1,284,244 aliens were removed from the United States in FY 1993 at a total cost of \$53,322,469. Of the total number of aliens removed, 35,231 were deportations and of that figure, 19,199 were criminal aliens. INS does not track expulsion expenses by criminal/noncriminal categories.

The average processing time for an alien incarcerated within a state prison is about 8 hours. This estimate includes the time it takes to cull rosters of foreign-born inmates, conduct records checks, travel to remote sites, conduct the interview, verify information provided by the inmate, prepare the documents required to process the alien for deportation and serve the alien with the charging document and related information. Not included in these figures are the times associated with the government's attorney reviewing the case prior to the first deportation hearing, the attorney and other INS personnel's presence at each hearing, case tracking, liaison with various interested parties, travel and wait time during alien escort duties, removal of aliens and assorted additional paperwork required to prepare or close the case

(dependent on the number of hearings conducted and aliens removed).

QUESTION 2

When will the "Enforce" automated information system be completed and what will it do?

RESPONSE:

ENFORCE, the proposed Case Tracking and Enforcement Management Information System, will be developed over an 18 to 24 month development and testing cycle, then subsequently deployed over the next 12 months. All this is dependant on future funding. For example, we have requested FY 1995 and FY 1996 funds (from the Crime Control Fund provided for in the Senate-passed crime bill) for full development as part of the recent criminal alien budget review. Deployment depends on acquiring an INS Servicewide system/equipment infrastructure which is being budgeted separately since it covers all INS automated initiatives.

The INS's Office of Enforcement is responsible for identifying, apprehending, detaining, and removing aliens illegally attempting to enter the United States between ports of entry or aliens already in the country in violation of law. Currently, many of these enforcement reporting and alien processing activities are conducted manually in a labor-intensive and forms-based process. Information on specific operations or on overall performance is difficult to compile due to lack of a Servicewide system automation. Continued political and economic unrest in third world countries and former Communist states in Eastern Europe have caused an ever-increasing influx of aliens attempting to illegally enter the United States to seek stable and prosperous lives. There is also an increasing number of criminal aliens whose presence or entry into this country go undetected.

ENFORCE will be an automated information system to support INS Servicewide case tracking and central reporting of management statistics. ENFORCE will support the 5 major enforcement processes: investigations of aliens (which include preliminary investigation and intelligence analysis); arrest and seizure; detentions; legal review; and removal of aliens from the United States.

ENFORCE will allow enforcement personnel resources to perform more actual law enforcement work by providing accurate and rapid: (1) input, storage, distribution, and retrieval of enforcement case data; (2) searching and reporting of specific open or closed cases by name or other key index; and (3) compilation and reporting of enforcement performance and work load statistics. ENFORCE will also allow INS enforcement management to receive up-to-date status for ongoing cases and for overall enforcement operations.

ENFORCE will consist of a custom-designed management information system with a distributed network of workstations and

data base servers that operates over an INS Servicewide information system infrastructure. Case data will reside locally at the District or Sector ENFORCE data bases to support timely access and updating of on-going case work. An abbreviated copy of the case data will also reside at a central ENFORCE data repository to support INS Servicewide information analysis and reporting. To best support the dynamic and continuous nature of immigration law enforcement, the ENFORCE system will provide both desktop workstations and portable lap top computers to allow maximum flexibility in data entry and case access.

QUESTION 3

What efforts is the INS making to put its paper based A-file system "on line" so that A-files can be accessed by computer terminals?

RESPONSE:

Automated casework systems, (e.g., the Computer Linked Application Information Management System or "CLAIMS"), are capturing the information needed by adjudicators and others for decision-making in an electronic (digitized) form. The collection and storage of this information digitally will permit its transmission electronically to the personnel who need it. At the present time, approximately 60 percent of INS adjudicative casework is processed through these systems, much of it without need of paper files.

The INS file locator system, the Central Index System (CIS), has been vastly improved in terms of accuracy and responsiveness. The information is available to more than 10,000 users throughout the INS, via "on line" terminals and a sophisticated communications network.

The next phase of records improvement involves removal of the existing paper files from day-to-day use. The new casework systems will digitize new A-File information as it is received by INS without the need to create or use paper files in the future. Plans call for existing paper files to be removed from the field offices and stored centrally. Requests for information currently in paper A-Files will be serviced electronically in the future by digitizing only the information needed on demand. This will permit instantaneous access to information anywhere it is needed. The new INS records system will include biometric information (e.g., digitized fingerprints, photographs, and signatures) as well as text.

QUESTION 4

How does the INS evaluate those aggravated felons that it releases pending their removal proceeding[s]? Specifically, how does INS evaluate the factors of "flight risk" and "danger to the community" when considering the release of an aggravated felon?

RESPONSE:

In accordance with regulation (8 CFR 242.2(h)), the INS review of each case to determine custody or release conditions includes, but is not limited to, the following factors:

- The seriousness of the crime(s) of which the alien has been convicted;
- Prior criminal history, especially the nature of the crimes and the number of arrests;
- Sentences imposed and actually served;
- History of failures to appear for court;
- Probation history;
- Evidence of rehabilitative effort or recidivism;
- Equities in the United States;
- Availability of relief from deportation and the likelihood of its being granted; and,
- Prior immigration violations and history.

QUESTION 5

You testified that INS plans to do a study regarding criminal aliens who fail to appear for hearings. How will INS study this issue and when? Will the INS develop risk assessment instruments such as those used by parole commissions?

RESPONSE:

One initiative included in the proposed FY 1995 budget (from the Crime Control Fund provided for in the Senate-passed crime bill) dedicates additional resources to identifying and processing criminal aliens. INS will evaluate the impact of these, or any other, additional resources on enforcement operations, consistent with previous commitments to identify and process for removal aliens in those locations where the greatest concentration exists, as in California, Texas, New York, Florida, and Illinois. This evaluation will take place by either an in-house assessment (staffing model survey or similar study) or by hiring an outside contractor.

Additionally, INS will review its procedures and criteria on our ability to detain certain aliens for administrative proceedings. This will include developing more informed methods and guidelines for bond determination and other matters. Risk assessment instruments such as those used by parole commissions could be an additional practical option.

QUESTIONS 6 & 7

Would amending current law to prohibit the release of all aggravated felons pending removal proceeding[s] be a good idea? Should current law be amended to prohibit the release of all non-permanent resident alien aggravated felons pending deportation?

RESPONSE

INS does not have sufficient resources to detain each and every criminal alien until removal can be effected. Detention of aggravated felons is the highest priority since INS is prohibited by statute from releasing aggravated felons unless they are lawfully admitted, likely to appear at future hearings and are not a threat to the community. Each case is carefully reviewed before a custody determination is made.

The Department of Justice would not support a blanket prohibition on the release of all aggravated felons, whether or not such a bar was limited to aliens who are not legal permanent residents. We believe that the current evaluation of "flight risk" and "danger to the community" when considering the release of an aggravated felon, as described in our answer to question four above, is appropriate.

At this time, there are approximately 25 deportable aggravated felons in detention who are not lawfully admitted to the United States and who, for various reasons, cannot be removed to their home countries. INS is prohibited by law from releasing these aliens. This population will continue to grow unless there are unexpected diplomatic breakthroughs with their home countries. An amendment that takes away the discretion to release aggravated felons who are lawfully admitted and do not pose a threat to the community would exacerbate this situation.

Such an amendment would also eliminate our ability to release certain excludable aggravated felons whose repatriation can not be effected--- as in the case of some Mariel Cubans.

QUESTION 8

Please describe any specific plans you have for better coordination between INS investigators and [the] Border Patrol regarding criminal aliens.

RESPONSE:

Generally speaking, all programs within the INS work well together. To ensure better coordination in a climate of limited resources, however, Memoranda of Understanding have been executed between Border Patrol Sectors and District Offices. Some have been executed to reduce operational overlap or supplement intra-agency efforts in geographical locations with few Service resources.

Others only deal with contingency plans for cooperative efforts for atypical circumstances requiring an organized response.

In the past, there have been situations in which the distribution of resources, jurisdictional disputes or overlapping enforcement activities have had a negative impact on operations. INS, however, will not tolerate injurious internal rivalries which detract from the overall mission. We strive for intra-agency cooperation to achieve carefully defined national goals.

To this end, all Service programs are working together to incorporate several technological initiatives into operations. These include the Automated Fingerprint Identification System, the National Criminal Alien Tracking Center, and ENFORCE (the automation of alien processing via computer and other technology). Working as one team, we can work smarter and more effectively.

QUESTION 9

In your testimony, you mentioned that INS has increased participation in drug task force activities in several cities including Miami, Houston, Los Angeles and New York. Has the INS experienced any cooperation problems with local law enforcement in these cities due to local non-cooperation laws or regulations? If so, please describe.

RESPONSE:

INS has experienced no problems with local law enforcement involved in major drug task force operations in the cities mentioned due to local non-cooperation laws or regulations.

QUESTION 10

What kind of difficulties do INS agents face when they are confronted with sanctuary policies or official non-cooperation policies by government entities? Please describe specific examples.

RESPONSE:

In general, sanctuary policies or official non-cooperation policies by various governmental entities creates operational problems for INS agents. These policies includes: (1) restrictions in interviewing foreign-born nationals or bona fide criminal aliens in local jails; (2) excluding INS agents from local and national interagency task forces and other law enforcement initiatives specifically designed to dismantle criminal organizations and eliminate or profoundly disrupt serious criminal activity; (3) state statutes that prohibit public funds from being spent on cooperation with INS; and (4) public statements that a locality has a policy of cooperation with INS where there also is an unwritten policy of non-cooperation.

These kinds of non-cooperation policies result in lack of INS access to information on aliens involved in gang activity, lack of intelligence sharing, and an adverse impact on the ability of INS to work in law enforcement initiatives specifically designed to dismantle criminal organizations and eliminate or profoundly disrupt serious criminal activity.

QUESTION 11

Do you support my recent Senate amendment to the crime bill that would prohibit those local governments that adopt or practice official policies of non-cooperation with the INS from getting funds under the crime bill?

RESPONSE:

The Administration currently is reviewing the crime bill as a whole. The Administration supports the goal of your amendment to increase cooperation between the INS and local governments concerning the removal of criminal aliens, but is concerned that its current wording may be overbroad and may result in unanticipated burdens on states and localities.

QUESTION 12

In your testimony, you state that the INS has difficulty locating and obtaining the certified conviction records required to deport criminal aliens. Are states complying with the law requiring that the states provide certified conviction records to the INS at no expense? Please identify those states which are not supplying records and describe any efforts by INS to secure compliance.

RESPONSE:

Until all 54 jurisdictions are in full compliance with all parts of Section 507 of the Immigration Act of 1990, there will be delays in providing traditional paper records to INS. Many states in compliance with the law have begun to provide electronic conviction records. Those states that are not have been working with the INS to provide required information in a timely and consistent manner. Most judicial jurisdictions which are providing paper records to INS provide them to the local INS office without fee and in a timely manner.

Some official requests for certified conviction records go unheeded or only are provided after an unreasonable delay. The courts which have not consistently provided required documentation in a timely manner, or which require a fee, include the following:

- California: The Superior and Municipal Courts of San Bernardino County; Superior Court, Central District, Los Angeles; Superior Court, Santa Cruz.

- Florida: Broward and Monroe counties.
- New York: The five boroughs of New York, New York (Bronx, Brooklyn, Manhattan, Queens and Staten Island).
- Oklahoma: Oklahoma County.
- Pennsylvania: Clerk of Courts Office, Allegheny County; Clerk of Quarter Sessions, Philadelphia County.

It should also be noted that several federal courts charge the INS fees for certified conviction documents. Recently, a policy clarification/change by the Administrative Office of the U.S. Courts expanded the fee assessment to all requestors, including those using on-line automated services. Legislation exempting INS from fees for records from the federal judiciary would assist in expediting the removal of criminal aliens convicted in federal courts.

QUESTION 13

Until very recently, the prison system in the state of Delaware had not been contacted by the INS in over a year. Are states such as Delaware, that may not have a large alien population, a lower priority for INS with regard to criminal aliens?

RESPONSE:

INS resources are primarily dedicated toward the states having the highest concentration of criminal aliens, such as California (18,042 aliens), Texas (10,352 aliens) and New York (8,119 aliens). By comparison, as of October 1, 1993, Delaware had 58 foreign-born inmates in its state prisons.

However, INS does respond to notifications from Delaware prison officials about foreign-born inmates. In addition, pursuant to section 507 of the Immigration Act of 1990, INS now is receiving information from Delaware on all foreign-born persons convicted of crimes which may render them deportable from the United States, including information about persons on probation, parole, and directed community service, as well as those sentenced to prison. This data will enable INS properly to address the criminal alien problem in states with smaller numbers of foreign-born inmates even that in Delaware (such as Maine, with 10 foreign-born inmates; North Dakota, with 9 foreign-born inmates; and West Virginia, with 7 foreign-born inmates, as of October 1, 1993).

QUESTION 14

How widespread is the practice of accepting written stipulations of deportation in cases where an alien waives an in-person hearing? Can this program be expanded? If so, how?



3 9999 05982 859 8

RESPONSE:

There is only one formal program at this time, in Houston, Texas. All potential cases for this program are prescreened by the Houston District Counsel's Office. All cases accepted into this program involve aliens who are ineligible for any relief from deportation. The Service is currently exploring the feasibility of setting up such a program in Washington State. In addition, Immigration Judges accept written stipulations on an ad hoc basis in many locations.

Acceptance of cases where the alien has agreed to a final order of deportation without a personal appearance before the immigration judge is only valid with the express concurrence and cooperation of the EOIR. The major concern in setting up such a program is in preserving due process rights for the alien. Expansion of the program is limited by the type of cases within a particular jurisdiction (aliens who are eligible for relief from deportation are unlikely to stipulate) and the availability of pro bono counsel.

QUESTION 15

Could the so-called "quick deports" that are targeted by some institutional hearing programs be deported by written stipulation of deportation?

RESPONSE

Certainly, if the right set of circumstances exists to support the operation of such a program. For example, the program functions well in Houston, Texas because the right circumstances exist to make the program possible.

Circumstances that must exist to run such a program include: the alien must have easy access to legal counsel at no expense to the government; the alien is not eligible for any relief from deportation; a travel document is readily obtainable; the alien's deportation can be effected quickly and shortly after the alien signs the order agreeing to deportation. Without these elements, an incarcerated alien is unlikely to have any incentive to participate in a "quick deport" program.

QUESTION 16

What legislative recommendations do you have, in addition to those made in your statement and at the November 16 hearing, with regard to criminal aliens?

RESPONSE:

The Administration is currently reviewing several legislative proposals to expedite the deportation of criminal aliens and is reviewing the criminal alien provisions of the Senate-passed crime

bill. The Administration previously has supported language that is now at section 5004(a) of the crime bill, which would amend section 212(c) of the Immigration and Nationality Act to bar certain defenses to deportation for an aggravated felon who has been sentenced to a term of imprisonment of at least five years. Currently, this bar only applies to aggravated felons who have served at least a five year term of imprisonment.

QUESTION 17

You mentioned that you would get back with us regarding specifics of the INS plans regarding fingerprint identification. Specifically, how will fingerprint based identification systems be used by the INS and when will such systems be deployed?

RESPONSE:

The Federal government is in the process of developing fingerprint based identification systems. The FBI is developing its NCIC 2000 and IAFIS Systems. The INS is coordinating its efforts both with the FBI and with state and local fingerprint based identification systems. It should be noted that none of the state or local systems are compatible. For this reason INS is focusing on the FBI's solution, which promises to yield an integrated nationwide capability.

INS currently has an interagency agreement which provides access to the Western Identification Network (WIN), a consortium of western states. This agreement also provides access to the California State System (CALID) through WIN. WIN has a database of approximately 2 million, while CALID has approximately 12 million records. Access allows a search of fingerprints, as well as the registration within the system of the INS fingerprints of interest. INS has registered fingerprints on approximately 15,000 individuals to date. INS has access to the WIN and CALID Systems from 44 locations within the San Diego, Livermore and Tucson Border Patrol Sectors and from the San Ysidro Port of Entry for secondary inspections.

Although the system can be very effective depending on the requirement, speed of response is a major operation consideration. The system requires 20 minutes to enter a 10 print card image, produced by a high quality fax machine, into the booking station for transmission to WIN. Responses from WIN vary from instantaneous to 6 hours depending on their traffic volumes from other members of the consortium. INS requirements are for a 5 minute response for Border Patrol applications and 30 seconds for use on primary inspection lanes at Ports of Entry. We are, however, exploring software solutions to help with these response time problems.

INS is conducting a study of the cost effectiveness of access to WIN to determine whether the capability should be maintained or expanded.

QUESTION 18

What is being done, specifically, to secure cooperation from Jamaica, Nigeria and the Dominican Republic to see that these countries become more cooperative in issuing travel documents to criminal aliens awaiting deportation from the United States?

RESPONSE:

The INS has called to the attention of the Department of State (DOS), those countries which have been less than cooperative in the issuance of travel documents. The INS and the DOS have met with representatives of those countries to encourage better cooperation in this area. These meetings have met with some success.

The INS was recently able to obtain travel documents and remove 78 Nigerian criminal, mental and medical cases who had presented a major INS detention problem.

INS has agreed to provide Jamaica with advance notice of deportation and criminal history information relating to Jamaican nationals. This has led to increased cooperation in the issuance of travel documents.

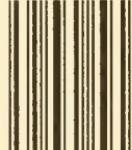
There has been no consistent problem in obtaining travel documents for nationals of the Dominican Republic.



ISBN 0-16-044148-X



90000



9 780160 441486

